

# IDAHO CODE

## TITLES 33 and 34

### EDUCATION to ELECTIONS

Current through 2020 Regular and First  
Extraordinary Sessions

MICHIE

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**IDAHO CODE**

**CONTAINING THE**

**GENERAL LAWS OF IDAHO**  
**ANNOTATED**

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COMMISSIONERS

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**TITLES 33–34**





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This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports: Idaho Reports

Pacific Reporter

Federal Supplement

Federal Reporter

United States Supreme Court Reports, Lawyers' Edition Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.

Idaho Rules of Civil Procedure

Idaho Evidence Rule

Idaho Rules of Evidence

Idaho R. Crim. P.

Idaho Criminal Rules

Idaho Misdemeanor Crim. Rule

Misdemeanor Criminal Rules

I.I.R.

Idaho Infraction Rules

I.J.R.

Idaho Juvenile Rules

I.C.A.R.

Idaho Court Administrative Rules

Idaho App. R.

Idaho Appellate Rules

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## **USER'S GUIDE**

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

## ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: “No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.”

**Section 67-510 Idaho Code** provides: “No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law.

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.”

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921 .....	March 5, 1921
1923 .....	March 9, 1923
1925 .....	March 5, 1925
1927 .....	March 3, 1927
1929 .....	March 7, 1929
1931 .....	March 5, 1931
1931 (E.S.) .....	March 13, 1931
1933 .....	March 1, 1933
1933 (E.S.) .....	June 22, 1933
1935 .....	March 8, 1935
1935 (1st E.S.) .....	March 20, 1935
1935 (2nd E.S.) .....	July 10, 1935
1935 (3rd E.S.) .....	July 31, 1936

1937 .....	March 6, 1937
1937 (E.S.) .....	November 30, 1938
1939 .....	March 2, 1939
1941 .....	March 8, 1941
1943 .....	February 28, 1943
1944 (1st E.S.) .....	March 1, 1944
1944 (2nd E.S.) .....	March 4, 1944
1945 .....	March 9, 1945
1946 (1st E.S.) .....	March 7, 1946
1947 .....	March 7, 1947
1949 .....	March 4, 1949
1950 (E.S.) .....	February 25, 1950
1951 .....	March 12, 1951
1952 (E.S.) .....	January 16, 1952
1953 .....	March 6, 1953
1955 .....	March 5, 1955
1957 .....	March 16, 1957
1959 .....	March 9, 1959
1961 .....	March 2, 1961
1961 (1st E.S.) .....	August 4, 1961
1963 .....	March 19, 1963
1964 (E.S.) .....	August 1, 1964
1965 .....	March 18, 1965
1965 (1st E.S.) .....	March 25, 1965
1966 (2nd E.S.) .....	March 5, 1966
1966 (3rd E.S.) .....	March 17, 1966
1967 .....	March 31, 1967
1967 (1st E.S.) .....	June 23, 1967
1968 (2nd E.S.) .....	February 9, 1968
1969 .....	March 27, 1969
1970 .....	March 7, 1970
1971 .....	March 19, 1971

1971 (E.S.) .....	April 8, 1971
1972 .....	March 25, 1972
1973 .....	March 13, 1973
1974 .....	March 30, 1974
1975 .....	March 22, 1975
1976 .....	March 19, 1976
1977 .....	March 21, 1977
1978 .....	March 18, 1978
1979 .....	March 26, 1979
1980 .....	March 31, 1980
1981 .....	March 27, 1981
1981 (E.S.) .....	July 21, 1981
1982 .....	March 24, 1982
1983 .....	April 14, 1983
1983 (E.S.) .....	May 11, 1983
1984 .....	March 31, 1984
1985 .....	March 13, 1985
1986 .....	March 28, 1986
1987 .....	April 1, 1987
1988 .....	March 31, 1988
1989 .....	March 29, 1989
1990 .....	March 30, 1990
1991 .....	March 30, 1991
1992 .....	April 3, 1992
1992 (E.S.) .....	July 28, 1992
1993 .....	March 27, 1993
1994 .....	April 1, 1994
1995 .....	March 17, 1995
1996 .....	March 15, 1996
1997 .....	March 19, 1997
1998 .....	March 23, 1998
1999 .....	March 19, 1999

2000 .....	April 5, 2000
2001 .....	March 30, 2001
2002 .....	March 15, 2002
2003 .....	May 3, 2003
2004 .....	March 20, 2004
2005 .....	April 6, 2005
2006 .....	April 11, 2006
2006 (E.S) .....	August 25, 2006
2007 .....	March 30, 2007
2008 .....	April 2, 2008
2009 .....	May 8, 2009
2010 .....	March 29, 2010
2011 .....	April 7, 2011
2012 .....	March 29, 2012
2013 .....	April 4, 2013
2014 .....	March 20, 2014
2015 .....	April 11, 2015
2015 (E.S.) .....	May 18, 2015
2016 .....	March 25, 2016
2017 .....	March 29, 2017
2018 .....	March 28, 2018
2019 .....	April 11, 2019
2020 .....	March 20, 2020
2020 (1st E.S.) .....	August 26, 2020



Idaho Code Title 33

**TITLE 33  
EDUCATION**

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## **CHAPTER 1**

### **STATE BOARD OF EDUCATION**

#### **Section.**

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33-102. Membership — Appointment — Term of office — Qualifications — Place of office.

33-102A. Office of the state board — Executive officer — Appointment — Compensation — Duties and powers.

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33-134. Assessment item review committee.

33-135. Teachers — classroom size — reporting.

33-136. Suicide prevention in schools.

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**33-101. Creation of board.** — For the general supervision, governance and control of all state educational institutions, to wit: University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, the School for the Deaf and the Blind and any other state educational institution which may hereafter be founded, and for the general supervision, governance and control of the public school systems, including public community colleges, a state board of education is created. The said board shall be known as the state board of education and board of regents of the University of Idaho.

For the purposes of [section 20, article IV, of the constitution](#) of the state of Idaho, the state board of education and all of its offices, agencies, divisions and departments shall be an executive department of state government.

Where the term “state board” shall hereafter appear, it shall mean the state board of education and board of regents of the University of Idaho.

### **History.**

1963, ch. 13, § 1, p. 27; am. 1974, ch. 10, § 1, p. 49; am. 1993, ch. 404, § 1, p. 1470; am. 1999, ch. 56, § 1, p. 143.

## **STATUTORY NOTES**

### **Cross References.**

Appeals from state board in matters affecting school districts, § 33-314.

Board established by Idaho [Const., Art. IX, § 2](#).

Commission for libraries, § 33-2501 et seq.

Contracts for housing facilities at state institutions, § 33-3701.

Designated as state board for career technical education, § 33-2202.

Dormitory fund for state institutions, § 33-3702.

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Vocational education, cooperation with federal office of education, § 33-2202; annual report to governor, § 33-2206.

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## **JUDICIAL DECISIONS**

### **Analysis**

**Constitutionality.**

**Immunity from suit.**

**Constitutionality.**

Idaho **Const., Art. IX, § 2** requires a single board of education to supervise the state educational institutions and public school system of the State of Idaho. House Bill 345 (1993, ch. 404, which amended §§ 33-101, 33-102, 33-102A, and 33-2802) which created three boards of education was unconstitutional. **Evans v. Andrus, 124 Idaho 6, 855 P.2d 467 (1993).**

**Immunity from Suit.**

The state board of education is immune from suit in federal court pursuant to the **Eleventh Amendment of the United States Constitution**. **Milbouer v. Keppler, 644 F. Supp. 201 (D. Idaho 1986).**

## **OPINIONS OF ATTORNEY GENERAL**

**1993 Act.**

The historical enactment of this section, as well as its plain language, requires that the educational affairs of the state be governed by a single board of education; therefore, an interpretation of S.L. 1993, ch. 404,



section 3 providing for three autonomous governing boards of education to supervise the education affairs of the state was unconstitutional. OAG 93-6.

In implementing the 1993 amendment of this section by House Bill 345, chapter 404, to comply with the constitutional requirements of Idaho [Const., Art. IX, § 2](#), the board of education may create guidelines dividing the board into two advisory councils, one for higher education and the other for public education. However, the general supervision and control of education must be retained by the board and the duties of the councils should be structured by the board with this requirement in mind. Each council can provide oversight in its particular areas of specialization and can be fact finders for the board and can provide their findings along with recommendations to the board; however the board must retain the power to make final determinations governing state educational institutions and the public school systems in the state. OAG 93-6.

### Decisions Under Prior Law

#### Analysis

[Corporate entity.](#)

[Successor of former board of regents.](#)

[Suits by and against.](#)

#### **Corporate Entity.**

Board of regents was a constitutional corporation with granted powers and, while functioning within the scope of its authority, was not subject to the control or supervision of any other branch, board, or department of the state government, but was a separate entity, and could sue and be sued, with power to contract and discharge indebtedness, with right to exercise its discretion within the powers granted, without authority to contract indebtedness against the state, and in no sense was a claim against the regents one against the state. [State ex rel. Black v. State Bd. of Educ., 33 Idaho 415, 196 P. 201 \(1921\).](#)

#### **Successor of Former Board of Regents.**

The state board of education, as successor to the former board of regents of the university, had the power and authority to defend an action

previously instituted against the latter for a pre-existing obligation. *First Nat'l Bank v. Regents of Univ.*, 26 Idaho 15, 140 P. 771 (1914).

The state board of education and board of regents of the University of Idaho was the constitutional and statutory successor of the original regents of the *University of Idaho*. *State ex rel. Miller v. State Board of Educ.*, 56 Idaho 210, 52 P.2d 141 (1935).

### **Suits By and Against.**

The state board of education as a board of trustees could sue and be sued. *Bobcock v. State Bd. of Educ.*, 55 Idaho 18, 37 P.2d 232 (1934).

**33-102. Membership — Appointment — Term of office — Qualifications — Place of office.** — The state board of education shall consist of the state superintendent of public instruction, who shall be an ex officio voting member and who shall serve as executive secretary of the board for all elementary and secondary school matters, and seven (7) members appointed by the governor, each for a term of five (5) years. Annually on the first day of July the governor shall appoint members to fill the board positions for which the terms of office have expired. Upon the expiration date of the term of office, a member shall continue to serve until a successor shall have been appointed. The governor shall, by appointment, fill any vacancy on the board, such appointment to be for the unexpired term of the retiring member. Appointment to the board shall be made solely upon consideration of the ability of such appointees efficiently to serve the interests of the people, and education, without reference to locality, occupation, party affiliation or religion. Any person appointed to said board shall have been a resident of the state for not less than three (3) years prior to the date of appointment; and shall qualify and assume the duties in accordance with laws governing similar appointments to, and qualifications for, office on other state boards. Members shall act and assume full powers and duties upon appointment, but such appointments shall be subject to confirmation by the senate at its next regular session.

The state board shall have and maintain its office in Ada county.

### **History.**

1963, ch. 13, § 2, p. 27; am. 1965, ch. 253, § 1, p. 637; am. 1972, ch. 85, § 1, p. 172; am. 1974, ch. 10, § 2, p. 49; am. 1993, ch. 404, § 2, p. 1470; am. 1999, ch. 56, § 2, p. 143; am. 2001, ch. 183, § 8, p. 613; am. 2014, ch. 138, § 1, p. 376.

## **STATUTORY NOTES**

### **Cross References.**

Superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

The 2014 amendment, by ch. 138, in the first paragraph, substituted “July” for “March” in the second sentence, inserted the present third sentence, and rewrote the last sentence, which formerly read: “All appointments of members to the state board of education made after the effective date of this act must be confirmed by the senate”; and deleted the former second paragraph, which read: “Members of the state board of education holding office on the effective date of this act shall continue in office for the balance of the term to which they were appointed”.

## **JUDICIAL DECISIONS**

### **Constitutionality.**

Idaho [Const., Art. IX, § 2](#) requires a single board of education to supervise the state educational institutions and public school system of the State of Idaho. House Bill 345 (1993, ch. 404, which amended §§ 33-101, 33-102, 33-102A, and 33-2802) which created three boards of education was unconstitutional. [Evans v. Andrus, 124 Idaho 6, 855 P.2d 467 \(1993\)](#).

**Cited in:** *Ybarra v. Legis. of Idaho*, — Idaho —, 466 P.3d 421 (2020).

**33-102A. Office of the state board — Executive officer — Appointment — Compensation — Duties and powers.** — There is hereby created as an executive agency of the state board of education the office of the state board of education. The state board of education is hereby authorized to appoint an executive officer of the state board who shall serve at the pleasure of the state board and shall receive such salary as fixed by the state board. The executive secretary may be appointed as the executive officer. The executive officer shall, under the direction of the state board, have such duties and powers as prescribed by the said board of regents and the state board of education, not otherwise assigned by law.

**History.**

I.C., § 102A, as added by 1965, ch. 253, § 2, p. 637; am. 1972, ch. 85, § 2, p. 172; am. 1974, ch. 10, § 3, p. 49; am. 1993, ch. 404, § 3, p. 1470; am. 1996, ch. 217, § 1, p. 717; am. 2011, ch. 222, § 1, p. 609.

**STATUTORY NOTES**

**Amendments.**

The 2011 amendment, by ch. 222, deleted the former second sentence, which read: “No employee or contractor of the executive officer of the state board of education or the office of the state board of education shall serve as a tenured faculty member of or have a contract with a state college or university”; and deleted the former last sentence, which read: “As used in this section, a ‘contractor’ shall mean a person who has signed or agreed to a contract with the state board of education or the executive officer of the state board of education for a period longer than six (6) months in duration.”

**Effective Dates.**

Section 3 of S.L. 1972, ch. 85 provided the act should take effect on and after July 1, 1972.

**JUDICIAL DECISIONS**

**Constitutionality.**

Idaho Const., Art. IX, § 2 requires a single board of education to supervise the state educational institutions and public school system of the State of Idaho. House Bill 345 (1993, ch. 404, which amended §§ 33-101, 33-102, 33-102A, and 33-2802) which created three boards of education was unconstitutional. *Evans v. Andrus*, 124 Idaho 6, 855 P.2d 467 (1993).

**33-102B. Superintendent of Public Instruction — Appointment — Compensation — Duties and Powers. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I. C., § 33-102B**, as added by 1967, ch. 273, § 1, p. 769, was repealed by S.L. 1969, ch. 7, § 1.

**33-103. Removal of members — Cause.** — The governor is empowered to remove from membership on the state board any member who has been proved guilty of gross immorality, malfeasance in office or incompetency, and shall fill the vacancy thus created by appointment as hereinbefore provided.

**History.**

1963, ch. 13, § 3, p. 27.



**33-104. Meetings of the board — Honorarium — Expenses — Organization.** — The state board shall hold no less than four (4) regular meetings annually at such time and place as may be directed by the board. Special meetings may be called by the president at any time and place designated in such call.

Each member shall be compensated as provided by [section 59-509\(h\)](#), [Idaho Code](#).

At its first meeting after the first day of April, in each year, the state board shall organize and shall elect from its membership a president, a vice president and a secretary.

**History.**

1963, ch. 13, § 4, p. 27; am. 1971, ch. 50, § 1, p. 122; am. 1976, ch. 354, § 1, p. 1169; am. 1980, ch. 247, § 25, p. 582; am. 1981, ch. 21, § 1, p. 35.

**STATUTORY NOTES**

**Cross References.**

Idaho State University trustees, meetings, § 33-3004.

Lewis-Clark State College, meetings of trustees, § 33-3103.

Meetings when acting as state board for career technical education, § 33-2204; as board of regents for University of Idaho, § 33-2805.

Standard Travel Pay and Allowance Act of 1949, § 67-2007.

**33-105. Rules — Executive department.** — (1) The state board shall have power to make rules for its own government and the government of its executive departments and offices; and, upon recommendations of its executive officers, to appoint to said departments and offices such specialists, clerks and other employees as the execution of duties may require, to fix their salaries and assign their duties.

(2) Statements of the state board of education and board of regents of the university of Idaho which relate to the curriculum of public educational institutions, to students attending or applicants to such institutions, or to the use and maintenance of land, equipment and buildings controlled by the respective institutions, are not rules and are not statements of general applicability for the purposes of chapter 52, title 67, Idaho Code.

(3) Notwithstanding any other provision of chapter 52, title 67, Idaho Code, the state board of education and board of regents of the university of Idaho shall be deemed to be in full compliance with the notice requirements of [section 67-5221, Idaho Code](#), if:

(a) Notice is given by including the intended action in the official written agenda for a regularly scheduled meeting of the board, and the agenda is available for public inspection at the central office of the board not less than five (5) days prior to the meeting; and

(b) Notice of the intended action, accompanied by the full text of the rule under consideration prepared so as to indicate words added or deleted from the presently effective text, if any, is transmitted to the director of the legislative services office at the same time that notice is given under paragraph (a) of this subsection. The director of the legislative services office shall refer the material under consideration to the germane joint subcommittee created in [section 67-454, Idaho Code](#), to afford the subcommittee opportunity to submit data, views or arguments in writing to the board prior to the time for receiving comment as provided in paragraph (d) of this subsection; and

(c) The intended action is discussed but not acted upon during the regularly scheduled meeting for which the agenda was prepared, but

instead is held for final action at the next regularly scheduled or later meeting of the board; and

(d) At least fifteen (15) days prior to the scheduled date for final action, the board shall mail to all persons who have made timely request in writing to the board and shall publish in an issue of the Idaho administrative bulletin a brief description of the intended action, or a concise summary of any statement of economic impact required pursuant to [section 67-5223\(2\), Idaho Code](#), and shall note the time when, the place where, and the manner in which interested persons may present their views thereon; and

(e) Upon adoption of a rule, the board, if requested in writing to do so by an interested person either prior to adoption or within twenty-eight (28) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

### **History.**

1963, ch. 13, § 5, p. 27; am. 1974, ch. 10, § 4, p. 49; am. 1992, ch. 263, § 55, p. 783; am. 1999, ch. 21, § 3, p. 29.

## **STATUTORY NOTES**

### **Cross References.**

Proprietary schools, rules and regulations, § 33-2401, et seq.

Director of legislative services, § 67-428.

### **Effective Dates.**

Section 61 of S.L. 1992, ch. 263 read:

“(1) Subsection (1) of section 60 of this act shall be in full force and effect on and after July 1, 1992, and additionally, the state auditor is authorized to appoint an administrative rules coordinator as soon as practical after July 1, 1992, and to declare such other sections of this act in full force and effect prior to July 1, 1993, as is necessary to effect an orderly publication of bulletins and the administrative code as soon after July 1, 1993, as possible.

“(2) All other sections of this act shall be in full force and effect on and after July 1, 1993. Any rules and regulations in effect on June 30, 1993, and rules which are promulgated between July 1, 1993, and the publication of the Idaho administrative code, shall be in full force and effect until such administrative rules are published by the coordinator.”

Section 4 of S.L. 1999, ch. 21 declared an emergency. Approved February 19, 1999.

**33-106. Budget.** — The state board shall prepare a budget of necessary expenditures of its executive department, and shall have control of all moneys appropriated for said purposes.

**History.**

1963, ch. 13, § 6, p. 27.

**STATUTORY NOTES**

**Cross References.**

Estimates for governor's budget, §§ 67-3501, 67-3502.

**33-107. General powers and duties of the state board.** — The state board shall have power to:

(1) Perform all duties prescribed for it by the school laws of the state; (2) Acquire, hold and dispose of title, rights and interests in real and personal property; (3) Have general supervision, through its executive departments and offices, of all entities of public education supported in whole or in part by state funds; (4)(a) Delegate to its executive secretary, to its executive officer, or to such other administrators as the board may appoint, such powers as said officers require to carry out and administer the policies, orders and directives of the board; (b) Delegate to its executive officer, if necessary to enhance effectiveness and efficiency, such powers as he requires to exercise discretionary authority and to perform duties vested in the state board related to the operation, control and management of Idaho's state universities and colleges and other agencies under the supervision and governance of the state board, and to perform duties and render decisions prescribed to the state board involving the exercise of judgment and discretion that affect the public schools in Idaho; (c) Delegate to the presidents of Idaho's state universities and colleges, if necessary to enhance effectiveness and efficiency, such powers as said officers require to exercise discretionary authority and to perform duties vested in the state board related to the operation, control and management of Idaho's state universities and colleges; (d) Delegate to its executive secretary, the superintendent of public instruction, if necessary to enhance effectiveness and efficiency, such powers as he requires to perform duties and render decisions prescribed to the state board involving the exercise of judgment and discretion that affect the public schools in Idaho; (e) Delegations of powers under this subsection must be adopted as statements of agency action by the state board, as provided in [section 33-105\(2\), Idaho Code](#), and pursuant to a process that provides for notice, opportunity for input and formal adoption by the state board; (5) Through its executive departments and offices:

(a) Enforce the school laws of the state,

(b) Study the educational conditions and needs of the state and recommend to the legislature needed changes in existing laws or additional legislation; (6) In addition to the powers conferred by chapter 24, title 33, Idaho Code: (a) Maintain a register of postsecondary educational institutions approved to provide programs and courses that lead to a degree or which provide, offer and sell degrees in accordance with the procedures established in chapter 24, title 33, Idaho Code, (b) Determine whether to accept academic credit at public postsecondary educational institutions in Idaho. Academic credit shall not be transferred into any Idaho public postsecondary institution from a postsecondary educational institution or other entity that is not accredited by an organization recognized by the board, (c) Maintain a register of proprietary schools approved to conduct, provide, offer or sell a course or courses of study in accordance with the procedures established in chapter 24, title 33, Idaho Code; (7) Prescribe the courses and programs of study to be offered at the public institutions of higher education, after consultation with the presidents of the affected institutions; (8) Approve new courses and programs of study to be offered at community colleges organized pursuant to chapter 21, title 33, Idaho Code, when the courses or programs of study are academic in nature and the credits derived therefrom are intended to be transferable to other state institutions of higher education for credit toward a baccalaureate degree, and when the courses or programs of study have been authorized by the board of trustees of the community college.

### **History.**

1963, ch. 13, § 7, p. 27; am. 1970, ch. 79, § 1, p. 195; am. 1974, ch. 10, § 5, p. 49; am. 1977, ch. 53, § 1, p. 103; 1983, ch. 155, § 2, p. 431; am. 1986, ch. 31, § 1, p. 101; am. 1987, ch. 48, § 1, p. 76; am. 1993, ch. 57, § 1, p. 154; am. 1997, ch. 188, § 1, p. 512; am. 1999, ch. 339, § 2, p. 918; am. 2006, ch. 240, § 1, p. 725; am. 2010, ch. 128, § 1, p. 274.

## **STATUTORY NOTES**

### **Cross References.**

Annexation or excision of territory from district, approved by state board, § 33-308.

Appeals from state board of education on matters affecting school districts, § 33-314.

Boundaries of school districts, correction or alteration by state board, § 33-307.

Boundaries of school districts, records kept by state board, § 33-306.

Consolidation of school districts, approval or disapproval of plan, §§ 33-310, 33-311.

County school fund apportionment, certification of amount to county auditor, §§ 33-1012 and 33-1013.

Division of school district, approval or disapproval, § 33-312.

Duration, renewal and lapse of teachers' certificates, regulations, § 33-1204.

Examination of books at instance of state board, § 33-121.

Examination of school buildings, § 33-122.

Financial and statistical reports of districts, § 33-701.

Lapsed school districts, duties of state board, § 33-309.

New district created by division, appointment of first board of trustees, § 33-505.

Property transferred to another unit of government, §§ 67-2322 to 67-2325.

Proprietary schools and post secondary education institutes, § 33-2401 et seq.

Record of teachers' certificates, § 33-1205.

Revocation of teachers' certificates, §§ 33-1208, 33-1209.

School bonds, approval of form, § 33-1107.

School buses, insurance required, § 33-1507.

School buses, standards of construction, § 33-1511.

Standards for schools set by state board, § 33-119.



Supervisor of school transportation, appointment, § 33-1511.

Tax levy by county, certification to county commissioners, § 33-1011.

Transfer of pupils to other districts, § 33-1401 et seq.

Transportation of pupils, powers, § 33-1501 et seq.

Trustee zones, approval or disapproval, § 33-313.

Vocational education, powers and duties of state board, § 33-2202.

### **Amendments.**

The 2006 amendment, by ch. 240, rewrote subsections (6)(a)-(c), which formerly read: “(a) maintain a register of courses and programs offered anywhere in the state of Idaho by postsecondary institutions which are: (1) located outside the state of Idaho and are offering courses or programs for academic credit or otherwise; or (2) located within the state of Idaho but not accredited by a regional or national accrediting agency recognized by the board and are offering courses for academic credit. The acceptance of academic or nonacademic credit, at public postsecondary institutions in Idaho, is the prerogative of the state board of education; provided however, credit transferred into Idaho public postsecondary institutions from nonaccredited postsecondary institutions can be accepted only upon positive review and recommendation by the individual postsecondary institutions and with the approval of the state board of education. A nonaccredited postsecondary institution is one which is not accredited by a regional accrediting agency recognized by the state board or the United States department of education, “(b) require compliance by institutions which desire to offer courses or programs in Idaho with the standards and procedures established in chapter 24, title 33, Idaho Code, or those standards, procedures and criteria set by the board, “(c) violation of the provisions of this act will be referred to the attorney general for appropriate action, including, but not limited to, injunctive relief.”

The 2010 amendment, by ch. 128, added the paragraph (4)(a) designation and therein inserted “and administer”; and added paragraphs (4)(b) through (4)(e).

### **Compiler’s Notes.**

This section was amended by S.L. 1997, ch. 188, § 1, effective July 1, 1997 and repealed by § 2, effective July 1, 1999; § 3 enacted a new § 33-107 which was to become effective July 1, 1999 as provided by § 5 of S.L. 1997, ch. 188. However, S.L. 1999, ch. 339, § 1, repealed §§ 2, 3, and 5 of S.L. 1997, ch. 188.

**Effective Dates.**

Section 2 of S.L. 1970, ch. 79 declared an emergency. Approved March 2, 1970.

**33-107A. Board may establish an optional retirement program. — (1)**

The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of the university of Idaho, Idaho state university, Boise state university, Lewis-Clark state college and the state board of education who are hired on or after July 1, 1993; provided, however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employee retirement system of Idaho.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

- (a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;
- (b) The relation of such rights and benefits to the amount of contributions to be made;
- (c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and
- (d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

- (a) Eligible employees are:
  - (i) Those faculty and nonclassified staff initially appointed or hired between July 1, 1990, and June 30, 1993; and

(ii) Those teaching staff and officers initially appointed or hired on or after July 1, 1993.

All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to remain a member of that retirement system. The election shall be made in writing, within sixty (60) days of the date of initial hire or appointment or the effective date of this act, whichever occurs later. It shall be filed with the administrative officer of the employing institution.

(c) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(d) The accumulated contributions of employees who make the one (1) time irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement system of Idaho to such qualified plan, maintained under the optional retirement program, as designated in writing by the employee.

(4)(a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to nine and thirty-five hundredths percent (9.35%) of each participant's salary, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits or any combination thereof, but in no event less than five percent (5%) of each participant's salary; and

(ii) To the public employee retirement system, an amount equal to one and forty-nine hundredths percent (1.49%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2025, and is in lieu of amortization payments and

withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code.

(b) Each participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of the participant's salary. Employee contributions may be made by employer pick-up pursuant to [section 59-1332, Idaho Code](#).

(c) Payment of contributions authorized or required under this subsection shall be made by the financial officer of the employing institution to the designated company or companies for the benefits of each participant.

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho as long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

### **History.**

[I.C., § 33-107A](#), as added by 1990, ch. 251, § 1, p. 720; am. 1992, ch. 198, § 1, p. 612; am. 1993, ch. 268, § 1, p. 902; am. 1996, ch. 79, § 6, p. 252; am. 1997, ch. 275, § 1, p. 813; am. 1998, ch. 297, § 1, p. 979; am. 2007, ch. 318, § 1, p. 947; am. 2018, ch. 176, § 1, p. 386.

## **STATUTORY NOTES**

### **Cross References.**

Public employee retirement system, § 59-1301 et seq.

### **Amendments.**

The 2007 amendment, by ch. 318, in subsection (4)(a)(i), substituted “nine and thirty-five hundredths percent (9.35%)” for “seven and eighty-one hundredths percent (7.81%)”; and in subsection (4)(a)(ii), substituted

“one and forty-nine hundredths percent (1.49%)” for “three and three one hundredths percent (3.03%)” and “July 1, 2025” for “July 1, 2015.”

The 2018 amendment, by ch. 176, deleted the former last sentence in subsection (1), which read: “The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.”

**Compiler’s Notes.**

The phrase “effective date of this act” in paragraph (3)(b) refers to the effective date of S.L. 1993, Chapter 268, which was effective July 1, 1993.

**33-107B. Board may establish an optional retirement program for community colleges.** — (1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of community colleges, including north Idaho college, college of southern Idaho and college of eastern Idaho, hired on or after July 1, 1997; provided however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employee retirement system of Idaho.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

- (a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;
- (b) The relation of such rights and benefits to the amount of contributions to be made;
- (c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and
- (d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

- (a) Eligible employees are the teaching staff and officers initially appointed or hired on or after the effective date of this chapter. All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Eligible employees who are vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to transfer to the optional retirement program. The election shall be made in writing and within sixty (60) days of the date of initial hire or appointment, or one hundred fifty (150) days after the effective date of this chapter, whichever occurs later. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(c) Teaching staff and officers employed by the institution the day before the effective date of this chapter may make a one (1) time irrevocable election to participate in the optional retirement program. The election shall be made in writing and within one hundred fifty (150) days after the effective date of this chapter. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(d) The accumulated contributions of employees who make the one (1) time irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement system of Idaho to such qualified plan, maintained under the optional retirement program, as designated in writing by the employee.

(e) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(4)(a) Each institution shall contribute on behalf of each participant in its optional retirement program. Effective on and after July 1, 2011, the institutional contribution optional retirement program rate shall be equal to the public employee retirement system of Idaho contribution rates to the designated company or companies, reduced by the amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits, or any combination thereof, but in no event less than five percent (5%) of each participant's salary.



(b) For the purposes of [section 59-1322, Idaho Code](#), the term “projected salaries” shall include the sum of the annual salaries of all participants in the optional retirement program established pursuant to this section.

(c) Each participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%). Employee contributions may be made by employer pick-up pursuant to [section 59-1332, Idaho Code](#).

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho as long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

### **History.**

[I.C., § 33-107B](#), as added by 1997, ch. 275, § 2, p. 813; am. 1998, ch. 297, § 2, p. 979; am. 1999, ch. 329, § 29, p. 852; am. 2011, ch. 118, § 1, p. 327; am. 2016, ch. 25, § 4, p. 35; am. 2018, ch. 17, § 1, p. 22; am. 2018, ch. 176, § 2, p. 386.

## **STATUTORY NOTES**

### **Cross References.**

Public employee retirement system, § 59-1301 et seq.

### **Amendments.**

The 2011 amendment, by ch. 118, added paragraph (4)(a)(iii).

The 2016 amendment, by ch. 25, substituted “postsecondary career technical education” for “postsecondary professional-technical education” in the section heading and near the middle of the first sentence in subsection (1).

This section was amended by two 2018 acts which appear to be compatible and have been compiled together.

The 2018 amendment, by ch. 17, deleted “and postsecondary career technical education institutions” from the end of the section heading and, near the middle of subsection (1), following “officers of community colleges”; substituted “college of eastern Idaho” for “eastern Idaho technical college” near the middle of subsections (1); and substituted “public employee retirement system of Idaho” for “PERSI” near the middle of present subsection (4)(a).

The 2018 amendment, by ch. 176, deleted “and postsecondary career technical education institutions” following “colleges” in the section heading; in subsection (1), deleted “and postsecondary career technical education institutions” following “officers of community colleges”, substituted “college of eastern Idaho” for “eastern Idaho technical college”, and deleted the former last sentence, which read: “The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program”; rewrote paragraph (4)(a), which formerly read: “(4)(a) Each institution shall contribute on behalf of each participant in its optional retirement program the following: (i) To the designated company or companies, an amount equal to seven and eighty-one hundredths percent (7.81%) of each participant’s salary, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits, or any combination thereof, but in no event less than five percent (5%) of each participant’s salary; (ii) To the public employee retirement system, an amount equal to three and eighty-three hundredths percent (3.83%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2011, and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code; and (iii) Effective on and after July 1, 2011, the institutional contribution optional retirement program rate shall be equal to the PERSI contribution rates.”

### **Compiler’s Notes.**

The phrase “the effective date of this chapter” in paragraphs (3)(a), (3)(b), and (3)(c), refers to the effective date of S.L. 1997, Chapter 275, which was effective July 1, 1997.

**33-107C. Board may establish additional retirement plans.** — (1) The state board of education and the board of regents of the university of Idaho may establish one (1) or more retirement plans as described herein for members of the teaching staff and officers of the university of Idaho, Idaho state university, Boise state university, Lewis-Clark state college and the state board of education who are eligible to participate in an optional retirement program described in section 33-107A, Idaho Code, or section 33-107B, Idaho Code, or who are vested members in the public employee retirement system of Idaho.

(2) A plan established under this section shall comply with federal tax laws applicable to the design of the plan, which may include [sections 401\(a\), 403\(b\), 415\(m\), 457\(b\) and 457\(f\) of the Internal Revenue Code](#) or other federal tax laws.

(3) To the extent permitted by federal tax law, a plan established under this section may provide for contributions or payments solely at the direction of the employer, or deferral of an employee's compensation at the election of the employee.

#### **History.**

[I.C., § 33-107C](#), as added by 2009, ch. 286, § 1, p. 859.

### **STATUTORY NOTES**

#### **Cross References.**

Public employee retirement system, § 59-1301 et seq.

#### **Federal References.**

The Internal Revenue Code provisions, referred to in subsection (2), are codified as [26 USCS §§ 401\(a\), 403\(b\), 415\(m\), 457\(b\), and 457\(f\)](#), respectively.

**33-107D. Campus access for religious students.** — (1) No state postsecondary educational institution shall take any action or enforce any policy that would deny a religious student group any benefit available to any other student group based on the religious student group's requirement that its leaders adhere to its sincerely held religious beliefs or standards of conduct.

(2) As used in this section: (a) "Benefits" include without limitation: (i) Recognition;

(ii) Registration; (iii) The use of facilities at the state postsecondary educational institution for meetings or speaking purposes; (iv) The use of channels of communication of the state postsecondary educational institution; and (v) Funding sources that are otherwise available to any other student group through the state postsecondary educational institution.

(b) "State postsecondary educational institution" means a public postsecondary organization governed or supervised by the state board, the board of regents of the university of Idaho, a board of trustees of a community college established pursuant to the provisions of chapter 21, title 33, Idaho Code, or the state board for career technical education.

### **History.**

**I.C., § 33-107D**, as added by 2013, ch. 190, § 1, p. 472; am. 2016, ch. 25, § 5, p. 35.

## **STATUTORY NOTES**

### **Amendments.**

The 2016 amendment, by ch. 25, substituted "state board for career technical education" for "state board for professional-technical education" at the end of paragraph (2)(b).

**33-108. Prepare and publish reports.** — The state board shall prepare, or cause to be prepared, and publish such reports, statistical tables and studies as may be a contribution to the general educational welfare of the state.

**History.**

1963, ch. 13, § 8, p. 27.

**33-109. Annual report.** — The state board shall cause to be prepared a report of its actions and expenditures for each year ending on the thirtieth day of June with such recommendations as it shall deem proper for the good of the state educational institutions and public schools of the state. Such report shall be prepared in the form and number, and filed at the time, provided by section 67-3502, Idaho Code.

**History.**

1963, ch. 13, § 9, p. 27; am. 1976, ch. 9, § 1, p. 25; am. 2010, ch. 79, § 8, p. 133.

**STATUTORY NOTES**

**Amendments.**

The 2010 amendment, by ch. 79, substituted “section 67-3502” for “sections 59-608 and 59-609.”

**33-110. Agency to negotiate, and accept, federal assistance.** — The state board is designated as the state educational agency which is authorized to negotiate, and contract with, the federal government, and to accept financial or other assistance from the federal government or any agency thereof, under such terms and conditions as may be prescribed by congressional enactment designed to further the cause of education.

**History.**

1963, ch. 13, § 10, p. 27.



**33-111. Budget for educational institutions.** — The state board shall submit to the budget director of the state, at a time set by said director, a budget for each state educational institution under its government and control, showing the financial needs of said institutions for the period for which appropriations are to be made. The board shall direct and control all funds so appropriated.

**History.**

1963, ch. 13, § 11, p. 27.

**STATUTORY NOTES**

**Compiler's Notes.**

The reference in this section to the budget director should be to the administrator of the division of financial management. See § 67-1910.

**33-112. Plans and specifications — Equipment, appliances and supplies.** — The state board shall authorize and approve all plans and specifications for the construction or alteration of buildings at the state educational institutions under its government and control; and shall direct and control the purchase of equipment, fixtures and supplies therefor.

**History.**

1963, ch. 13, § 12, p. 27.

**33-113. Limits of instruction.** — The state board, in the interests of efficiency, shall define the limits of all instruction in the educational institutions supported in whole or in part by the state, and, as far as practicable, prevent wasteful duplication of effort in said institutions.

**History.**

1963, ch. 13, § 13, p. 27.

**STATUTORY NOTES**

**Cross References.**

Courses of instruction, § 33-1601 et seq.

**33-114. Certification — Courses of study — Accreditation. —** Supervision and control of the certification of professional education personnel is vested in the state board. The board shall approve the program of education of such personnel in all higher institutions in the state, both public and private, and shall accredit as teacher training institutions those in which such programs have been approved.

**History.**

1963, ch. 13, § 14, p. 27.

**STATUTORY NOTES**

**Cross References.**

Certification of teachers, § 33-1201 et seq.

Lewis-Clark State College, § 33-3101 et seq.

**RESEARCH REFERENCES**

**Idaho Law Review.** — Regulation of Teacher Certification in Idaho: Proceedings Before Idaho's Professional Standards Commission Concerning the Denial of an Application for or Action Against a Teaching Certificate, John E. Rumel. 53 Idaho L. Rev. 527 (2017).

**33-115. Teachers' register.** — The state board shall keep in its department of education, a register of persons qualified to teach in Idaho, or of any persons otherwise qualified but not having received a teaching certificate, upon the request of such person. Information concerning persons so registered shall be available to any Idaho person seeking to employ teachers.

**History.**

1963, ch. 13, § 15, p. 27; am. 1974, ch. 10, § 6, p. 49.

**STATUTORY NOTES**

**Cross References.**

Record of teachers' certificates, § 33-1205.

**33-116. School districts under board supervision.** — All school districts in Idaho, including specially chartered school districts, shall be under the supervision and control of the state board.

**History.**

1963, ch. 13, § 16, p. 27.

**STATUTORY NOTES**

**Cross References.**

Annexation or excision of territory from district, approval by state board, § 33-308.

Boundaries of school districts, correction or alteration by state board, § 33-307.

Boundaries of school districts, records kept by state board, § 33-306.

Consolidation of school districts, approval or disapproval, §§ 33-310, 33-311.

Division of school district, approval or disapproval, § 33-312.

Lapsed school districts, duties of state board, § 33-309.

New district created by division, appointment of first board of trustees, § 33-505.

**JUDICIAL DECISIONS**

**Equal Education Opportunity.**

The state department of education, state board of education, and superintendent of public instruction are empowered under Idaho **Const., Art. IX, § 2**, this section, § 33-118 and § 33-119, and required under federal law to ensure that the needs of students with limited English language proficiency are addressed. **Idaho Migrant Council v. Board of Educ., 647 F.2d 69 (9th Cir. 1981).**

**33-117. Public school financial requirements.** — The state board shall submit to the budget director the financial requirements for appropriation to the public school income fund, for the foundation program of public school districts.

**History.**

1963, ch. 13, § 17, p. 27.

**STATUTORY NOTES**

**Cross References.**

Foundation program, § 33-1001 et seq.

Tax levy by county, certification to county commissioners, § 33-1011.

Public school income fund, § 33-903.

**Compiler's Notes.**

The reference in this section to the budget director should be to the administrator of the division of financial management. See § 67-1910.

**33-118. Courses of study — Curricular materials.** — (1) The state board shall prescribe the minimum courses to be taught in all public elementary and secondary schools, and shall cause to be prepared and issued, such syllabi, study guides and other instructional aids as the board shall from time to time deem necessary.

(2) The board shall determine how and under what rules curricular materials shall be adopted for the public schools, including the fees necessary to defray the cost of such adoption process. The board shall require all publishers of textbooks approved for use to furnish the department of education with electronic format for literary and nonliterary subjects when electronic formats become available for nonliterary subjects, in a standard format approved by the board, from which reproductions can be made for use by the blind.

(3) The board shall, by rule, determine the process by which the department of education reviews and approves online courses, pursuant to [section 33-1024, Idaho Code](#), and the fees necessary to defray the department's cost of such review and approval process.

(4) The board of trustees of each school district may adopt their own curricular materials consistent with the provisions of [section 33-512A, Idaho Code](#). Curricular materials adopted must be consistent with Idaho content standards as established by the state board of education.

### **History.**

1963, ch. 13, § 18, p. 27; am. 1994, ch. 333, § 1, p. 1027; am. 1998, ch. 88, § 1, p. 298; am. 1999, ch. 88, § 1, p. 289; am. 2012, ch. 189, § 1, p. 509; am. 2013, ch. 299, § 1, p. 791; am. 2014, ch. 154, § 1, p. 436.

## **STATUTORY NOTES**

### **Cross References.**

Alcohol, instruction on effects of, § 33-1605.

American flag, instruction in use of, § 33-1602.



Bible selections, choosing by state board, § 33-1604.

Constitution, instruction in, § 33-1602.

Courses of instruction, § 33-1601 et seq.

Driver training courses, minimum standards, § 33-1702.

Health and physical fitness, study guides by state board, § 33-1605.

Instructions to be in English language, § 33-1601.

Sectarian instruction forbidden, § 33-1603.

### **Amendments.**

The 2012 amendment, by ch. 189, added “Online courses” to the section heading; divided the existing provisions of the section into subsections (1) and (2); in subsection (2), inserted “including the fees necessary to defray the cost of such adoption process”; and added subsection (3).

The 2013 amendment, by ch. 298, substituted “section 33-1024” for “section 33-1627” in subsection (3).

The 2014 amendment, by ch. 154, deleted “Online courses” from the end of the section heading and added subsection (4).

## **JUDICIAL DECISIONS**

### **Analysis**

[Equal education opportunity.](#)

[Religious texts.](#)

[Requirements for school facilities.](#)

### **[Equal Education Opportunity.](#)**

The state department of education, state board of education, and superintendent of public instruction are empowered under Idaho [Const., Art. IX, § 2, §§ 33-116, 33-119](#) and this section and required under federal law, to ensure that the needs of students with limited English language proficiency are addressed. [Idaho Migrant Council v. Board of Educ., 647 F.2d 69 \(9th Cir. 1981\).](#)

### **Religious Texts.**

State education officials were reasonable in their belief that their banning religious texts from public school curriculum was lawful in light of Idaho Const., Art. IX, § 6, § 33-118, 33-118A, this section, and a legal opinion from a deputy in the attorney general's office upon which they acted. *Nampa Classical Acad. v. Goesling*, 714 F. Supp. 2d 1029 (D. Idaho 2010).

### **Requirements for School Facilities.**

Under Idaho Const., Art. IX, § 1, the requirements for school facilities, instructional programs and textbooks, and transportation systems as contained in regulations presently in effect, and promulgated pursuant to the legislative directive in this section, are consistent with the supreme court of Idaho's view of thoroughness. *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993).

## **RESEARCH REFERENCES**

**A.L.R.** — Validity of regulation by public school authorities as to clothes or personal appearance of pupils. 14 A.L.R.3d 1201.

**33-118A. Curricular materials — Adoption procedures.** — All curricular materials adoption committees appointed by the state board of education shall contain at least two (2) persons who are not public educators or school trustees. All meetings of curricular materials adoption committees shall be open to the public. Any member of the public may attend such meetings and file written or make oral objections to any curricular materials under consideration.

“Curricular materials” is defined as textbook and instructional media including software, audio/visual media and internet resources.

### **History.**

I.C., § 33-118A, as added by 1986, ch. 302, § 1, p. 752; am. 1998, ch. 88, § 2, p. 298; am. 2001, ch. 183, § 9, p. 613; am. 2008, ch. 217, § 1, p. 674; am. 2012, ch. 69, § 1, p. 200.

## **STATUTORY NOTES**

### **Amendments.**

The 2008 amendment, by ch. 217, in the last sentence in the first paragraph, inserted “in the immediately preceding three (3) years” and “and all electronically available curricular materials used in Idaho public schools.”

The 2012 amendment, by ch. 69, deleted “A complete and cataloged library of all curricular materials adopted in the immediately preceding three (3) years and used in Idaho public schools, and all electronically available curricular materials used in Idaho public schools are to be maintained at the state department of education at all times and open to the public” from the end of the first paragraph.

## **JUDICIAL DECISIONS**

### **Religious Texts.**

State education officials were reasonable in their belief that their banning religious texts from public school curriculum was lawful in light of Idaho

Const., Art. IX, § 6, § 33-118, this section, and a legal opinion from a deputy in the attorney general's office upon which they acted. *Nampa Classical Acad. v. Goesling*, 714 F. Supp. 2d 1029 (D. Idaho 2010).

**33-119. Accreditation of secondary schools — Standards for elementary schools.** — The state board shall establish standards for accreditation of any secondary school and set forth minimum requirements to be met by public, private and parochial secondary schools, and those in chartered school districts, for accredited status; and the board may establish such standards for all public elementary schools as it may deem necessary.

The board may withdraw accreditation from any secondary school after such period as it may establish when it has been determined that such school has failed or neglected to conform to accreditation standards; and it may reinstate such school as accredited when in its judgment such school has again qualified for accredited status. The board may further establish minimum requirements which any pupil shall meet to qualify for graduation from an accredited secondary school.

“Secondary school” for the purposes of this section shall mean a school which, for operational purposes, is organized and administered on the basis of grades seven (7) through twelve (12), inclusive, or any combination thereof.

“Elementary school” for the purposes of this section shall mean a school which, for operational purposes, is organized and administered on the basis of grades one (1) through six (6), inclusive, one (1) through eight (8), inclusive, or any combination of grades one (1) through eight (8), inclusive.

**History.**

1963, ch. 13, § 19, p. 27.

**STATUTORY NOTES**

**Cross References.**

Classifications of school districts, § 33-302.

Reclassification of district as elementary district when high school not maintained, § 33-303.

**JUDICIAL DECISIONS**

## **Equal Education Opportunity.**

The state department of education, state board of education, and superintendent of public instruction are empowered under Idaho [Const., Art. IX, § 2, §§ 33-116, 33-118](#) and this section, and required under federal law to ensure that the needs of students with limited English language proficiency are addressed. [Idaho Migrant Council v. Board of Educ., 647 F.2d 69 \(9th Cir. 1981\)](#).

**33-120. Uniform reporting.** — (1) The state superintendent of public instruction shall prescribe forms and format for uniform accounting for financial and statistical reports and performance measurements to provide consistent and uniform reporting by school districts.

(2) The state board of education may adopt rules pursuant to the provisions of chapter 52, title 67, Idaho Code, and under authority of [section 33-105, Idaho Code](#), to provide for and implement a student information management system.

**History.**

1963, ch. 13, § 20, p. 27; am. 1985, ch. 107, § 1, p. 191; am. 1994, ch. 175, § 1, p. 402; am. 2006, ch. 244, § 1, p. 740.

**STATUTORY NOTES**

**Cross References.**

Financial and statistical reports of districts, § 33-701.

State superintendent of public instruction, § 67-1501 et seq.

**Amendments.**

The 2006 amendment, by ch. 244, added the subsection (1) designation and subsection (2).

**33-120A. Idaho student information management system. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 33-120A**, as added by 2003, ch. 299, § 1, p. 814, was repealed by S.L. 2005, ch. 257, § 7. For present comparable provisions, see § 33-120(2).



**33-121. Examination of books at instance of the state board. —**  
Whenever in its judgment the public welfare demands it, the state board may direct the trustees of any school district to cause an examination of the books and accounts, and the assets and liabilities of their district, to be made, and a report thereof to be made to the state board. Upon failure or neglect of the board of trustees to have such examination and report made within a reasonable time, the state board may cause the same to be made, and the cost of such examination and report shall be paid by the district.

**History.**

1963, ch. 13, § 21, p. 27.

**STATUTORY NOTES**

**Cross References.**

District audits filed with state department of education, § 33-701.

Junior colleges, examination of books, § 33-2114.

**33-122. Sanitation — Safety — Cooperation with other state agencies.** — The state board shall cooperate with the board of health and welfare in establishing regulations covering school building sanitation, sewage disposal, water supply, or other matters affecting the public health, as shall in the opinion of the board be required. It may cooperate with any other department of state government in any matter in which such cooperation will be of assistance in carrying out its duties.

Whenever the state board has reason to believe that any building used as a school building is so structurally unsafe, unsound, or deficient, as to constitute a hazard to the pupils attending thereat, it shall have authority to cause an examination of such building to be made by a competent engineer. The engineer making such examination shall report, in writing, to the state board, setting out in what respect such building is unsafe, unsound, or deficient, as aforesaid.

The state board shall transmit a copy of such report to the board of trustees of the school district wherein such building is situate, or to the governing body of any such school if it not be a public school, and the same shall be kept in the administrative office of such school district, or school, there to be available for public inspection. The state board shall also order and cause to be published a summary of such engineer's report in at least one (1) issue of a newspaper having general circulation in the same school district, or in the area of the same school if it not be a public school.

#### **History.**

1963, ch. 13, § 22, p. 27; am. 1974, ch. 23, § 10, p. 633.

### **STATUTORY NOTES**

#### **Cross References.**

Board of health and welfare, § 56-1005.

#### **Effective Dates.**

Section 182 of S.L. 1974, ch. 23, provided the act should be in full force and effect on and after July 1, 1974.

**33-123. Education for inmates under jurisdiction of department of correction.** — The state board for career technical education, in cooperation with the state board of correction, shall have prepared suitable courses of study, including career technical training, for prisoners held under the jurisdiction of the department of correction, and the state board of correction shall make arrangements carrying into effect all provisions for the education of prisoners who are under the jurisdiction of the department of correction to the extent possible within the limits of moneys appropriated by the state legislature. Such educational opportunities shall be limited to those inmates who have a need, such need to be determined by the staff of the department of correction, and can benefit from training, and those inmates whose degree of custody classification allows participation in the classroom environment provided.

**History.**

1963, ch. 13, § 23, p. 27; am. 1982, ch. 64, § 1, p. 126; am. 1999, ch. 329, § 1, p. 852; am. 2009, ch. 28, § 1, p. 80; am. 2016, ch. 25, § 6, p. 35.

**STATUTORY NOTES**

**Cross References.**

Department of correction, § 20-201 et seq.

State board of correction, § 20-201 et seq.

**Amendments.**

The 2009 amendment, by ch. 28, inserted “for professional-technical education” near the beginning.

The 2016 amendment, by ch. 25, substituted “career technical” for “professional-technical” twice near the beginning of the first sentence.

**Effective Dates.**

Section 2 of S.L. 1982, ch. 64 declared an emergency. Approved March 15, 1982.

**33-124. Special vocational education programs.** — Any school district, or combination of school districts, within the state of Idaho, including charter districts, may submit to the state board of education a plan for the operation of a program providing instruction and training for students with disabilities under the age of twenty-two (22) years in vocational education. The state board of education may approve or disapprove such a plan. However, should the state board approve such a plan, then the program operated under such a plan shall be entitled to all considerations and benefits which by law are available to the educational programs of the school districts.

**History.**

I.C., § 33-124, as added by 1969, ch. 218, § 1, p. 713; am. 2010, ch. 235, § 11, p. 542.

**STATUTORY NOTES**

**Amendments.**

The 2010 amendment, by ch. 235, substituted “students with disabilities” for “handicapped students” in the first sentence.

**33-125. State department of education — Creation — Duties. —**

There is hereby established as an executive agency of the state board of education a department known as the state department of education. The state superintendent shall serve as the executive officer of such department and shall have the responsibility for carrying out policies, procedures and duties authorized by law or established by the state board of education for all elementary and secondary school matters, and to administer grants for the promotion of science education as provided in sections 33-128 and 33-129, Idaho Code.

**History.**

1972, ch. 126, § 1, p. 249; am. 1974, ch. 10, § 7, p. 49; am. 1991, ch. 139, § 1, p. 330; am. 2008, ch. 260, § 2, p. 753; am. 2016, ch. 182, § 4, p. 492.

**STATUTORY NOTES**

**Amendments.**

The 2008 amendment, by ch. 260, added the last sentence.

The 2016 amendment, by ch. 182, deleted the former last sentence, which read: “The department shall perform the duties assigned to it as specified in [section 67-5745D, Idaho Code](#), relating to the Idaho education network.”

**Compiler’s Notes.**

Section 1 of S.L. 2008, ch. 260 provided “Legislative Findings. The Legislature finds that:

“(1) High-bandwidth connectivity is an essential component of education infrastructure in the 21st century;

“(2) Idaho is behind in the use of high-bandwidth connectivity and technology to deliver educational opportunities to students and teachers;

“(3) High-bandwidth connectivity and technology can enable advanced and specialized courses to be shared within or among school districts and

allow students access to concurrent enrollment offered by higher education; and

“(4) A common high-bandwidth connectivity and technology platform will enable scarce educational resources to be shared throughout the state.”

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions.

## **JUDICIAL DECISIONS**

### **Constitutionality of Appropriation Bills.**

Two appropriations bills, Senate Bills 1409 and 1410 (2020 Session Laws Chapters 316 and 289), are constitutional, as the bills do not prohibit the superintendent from executing the policies, procedures, and duties authorized by law to that office, nor do the bills unconstitutionally delegate any of the superintendent’s inherent powers to the state board of education. *Ybarra v. Legis. of Idaho*, — Idaho —, 466 P.3d 421 (2020).

**33-125A. Duties of the state superintendent of public instruction and the state department of education.** — Under the direction of the state superintendent of public instruction, the state department of education shall:

(1) Coordinate with the Idaho digital learning academy as provided for in chapter 55, title 33, Idaho Code, the state board of education and school districts to distribute telecourses, teleconferences and other instructional and training services to and between public schools; (2) Coordinate with the Idaho digital learning academy, the state board of education and institutions of higher education to distribute college credit telecourses, teleconferences and other instructional and training services; and (3) Act as a clearinghouse for the materials, courses, publications and other applicable information related to the requirements of this section.

#### **History.**

**I.C., § 33-125A**, as added by 2009, ch. 131, § 1, p. 410; am. 2010, ch. 357, § 1, p. 935; am. 2016, ch. 182, § 5, p. 492.

### **STATUTORY NOTES**

#### **Cross References.**

Idaho digital learning academy, § 33-5501 et seq.

#### **Amendments.**

The 2010 amendment, by ch. 357, rewrote the section, reducing former subsection (2), relating to the membership and functionality of the Idaho education network program and resource council, to present subsection (5).

The 2016 amendment, by ch. 182, deleted “Idaho education network” at the beginning of the section heading and deleted former subsections (4) and (5), which read: “(4) Coordinate all e-rate funding applications for Idaho’s school districts and implement e-rate funds through the department of administration for related services provided under the purview of the Idaho education network (IEN); and (5) Appoint four (4) representatives to the Idaho education network program and resource advisory council (IPRAC) pursuant to the provisions of **section 67-5745E, Idaho Code.**”

**Compiler's Notes.**

S.L. 2010, Chapter 357 became law without the signature of the governor.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 4 of S.L. 2010, ch. 357 declared an emergency. Approved April 12, 2010.



**33-125B. Pay for success contracting — Duties of the state department of education.** — (1) The state department of education may enter into contracts for approved services. Notwithstanding the provisions of chapter 92, title 67, Idaho Code, the department may issue a request for information for a contract upon identification of a need for a special service, or interested parties may identify a need for service within the department and submit a proposal to the department to negotiate a contract. Any contract entered into pursuant to this section shall provide for:

- (a) An evidence-based program delivered by the service provider designed to enhance student academic achievement;
- (b) Mutually agreed upon grade-level performance targets and efficacy standards;
- (c) Identified source of moneys from which savings will be realized;
- (d) An external evaluator who shall have expertise in all of the following areas:
  - (i) Education;
  - (ii) Program evaluation and assessment;
  - (iii) Collection and maintenance of program data;
  - (iv) Demonstrated ability to link an individual student's data from grade to grade; and
  - (v) Knowledge of the Idaho-specific academic performance scores used to demonstrate efficacy of the service provider's program;
- (e) The state's payment obligations from the money appropriated to the public school support program, if the efficacy standards are met under the contract;
- (f) Terms under which the state may terminate the contract;
- (g) An annual audit to be performed by a certified public accountant; and
- (h) A mutually agreed upon formula for the distribution of savings realized by the service provider program.

An external evaluator shall approve the negotiated contract provisions relating to efficacy standards before the department may enter into any such contract.

(2) Investor moneys shall be adequate to cover all contract costs.

(3) The third-party administrator shall:

(a) Manage all moneys pursuant to subsection (2) of this section;

(b) When appropriate, direct payments to be made under the terms of the contract;

(c) Ensure an annual audit is conducted under the terms of the contract;

(d) Issue financial reports as required by the contract; and

(e) Complete all other compliance requirements of state or federal law.

(4) The department shall approve the school district or public charter school from which each cohort will be chosen. The priority for selection shall be given to:

(a) School districts or public charter schools reporting the greatest number of students who are not proficient to meet grade-level performance targets being used to evaluate the service provider's program;

(b) School districts or public charter schools reporting the greatest number of students on free and reduced lunch; and

(c) School districts or public charter schools in different regions of the state.

The selection of cohorts shall be made by mutual agreement between the service provider, the approved school district or public charter school and the department.

(5) The department shall withhold distributions to participating school districts or public charter schools for the intervention or remediation efforts identified in the contract. Moneys shall be held in the public school income fund until the external evaluator makes a determination under this subsection. If the external evaluator determines that the efficacy standards have been met, the moneys shall be distributed pursuant to the terms of the

contract. If the external evaluator determines that the efficacy standards have not been met, the moneys will be released to the school district or public charter school. Moneys withheld or distributed from this fund shall be subject to appropriation and shall not be included in public school discretionary funding variability pursuant to [section 33-1018, Idaho Code](#). If the contract is terminated for any reason other than the achievement or nonachievement of the efficacy standards, the moneys shall be distributed according to the terms of the contract governing such an event.

(6) The external evaluator shall:

(a) Determine whether the service provider has met the agreed upon efficacy standards under the terms of the contract by determining the outcomes for each cohort based on the following criteria:

(i) Whether there was an increase in the number of children proficient to meet grade-level performance targets at levels specified in the contract; and

(ii) Calculate savings realized for intervention or remediation as specified in the contract;

(b) Annually report the service provider efficacy standards to the department; and

(c) Report the service provider efficacy standards to the third-party administrator for the purpose of determining whether payment should be made under the terms of the contract.

(7) An oversight committee is hereby created for the purpose of deciding whether or not the state department of education will enter into a negotiation with an interested party under this section, and for the purpose of monitoring contracts entered into under this section. The committee shall meet as often as is necessary to fulfill its obligations under this subsection. The committee shall consist of the following people:

(a) The chief financial officer of the state department of education;

(b) The subject matter expert at the state department of education;

(c) A representative from the state controller's office;

(d) The house of representatives education committee chairman; and

(e) The senate education committee chairman.

(8) The state department of education shall report to the legislature on or before February 1 of each year on all contracts entered into pursuant to this section.

(9) The state board of education may promulgate rules implementing the provisions of this section.

(10) As used in this section:

(a) “Cohort” means a group of individuals who enter the service provider’s program on the same date.

(b) “Department” means the state department of education.

(c) “External evaluator” means the entity that is responsible for determining the efficacy of a service provider’s program.

(d) “Investor” means an individual or entity that provides the capital for the services specified in a contract.

(e) “Service provider” means an organization that implements an evidenced-based program that conforms to the terms of the contract.

(f) “Third-party administrator” means an SSAE-16 compliant firm or a firm licensed under chapter 2, title 54, Idaho Code, that manages all moneys deposited pursuant to this section and controlled by a contract.

### **History.**

**I.C., § 33-125B**, as added by 2015, ch. 299, § 1, p. 1179; am. 2016, ch. 289, § 6, p. 793; am. 2017, ch. 145, § 1, p. 341.

## **STATUTORY NOTES**

### **Cross References.**

Public school income fund, § 33-903.

State controller, § 67-1001 et seq.

### **Amendments.**

The 2016 amendment, by ch. 289, substituted “the provisions of chapter 92, title 67” for “67-5718” near the beginning of the second sentence in the

introductory paragraph in subsection (1).

The 2017 amendment, by ch. 145, deleted “department” preceding “moneys” in paragraph (1)(c); in subsection (4), substituted “school districts or public charter schools” for “LEAs” or similar language throughout, and added “and the department” at the end; inserted present subsection (5) and redesignated the subsequent subsections accordingly; substituted “savings realized” for “moneys no longer expended or distributed by the department” in present paragraph (6)(a)(ii); deleted paragraph (10)(e), which read: “‘Local education agency’ or ‘LEA’ means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through grade 12 public educational institutions,” and redesignated the subsequent paragraphs in subsection (10) accordingly.

**Compiler’s Notes.**

For additional information on SSAE-16, referred to in paragraph (10), see <http://www.ssae16.com>.

**33-126. Organization of department.** — The state department of education shall be organized in a manner as determined by the state board of education acting on the recommendations of the executive secretary.

**History.**

1972, ch. 126, § 2, p. 249; am. 1974, ch. 10, § 8, p. 49.

**STATUTORY NOTES**

**Effective Dates.**

Section 21 of S.L. 1974, ch. 10 provided the act should be in full force and effect on and after July 1, 1974.

**33-127. Employees.** — Employees of the department shall be appointed by the superintendent of public instruction in accordance with the provisions of chapter 16, title 59, and chapter 53, title 67, Idaho Code.

**History.**

1972, ch. 126, § 3, p. 249; am. 1989, ch. 94, § 1, p. 220.

**33-128. Statement of public purpose.** — The Idaho constitution established a system of free common schools recognizing that “the stability of a republican form of government depends mainly upon the intelligence of the people.” The legislature finds that there is a need for expanded educational experiences including a need for additional positive science education experiences for the youth of this state. The legislature finds that it is in the public interest to encourage science education opportunities through cooperative efforts with private nonprofit organizations offering science education programs.

**History.**

I.C., § 33-128, as added by 1991, ch. 139, § 2, p. 330.

**JUDICIAL DECISIONS**

**Cited in:** Ybarra v. Legis. of Idaho, — Idaho —, 466 P.3d 421 (2020).



**33-129. Matching grants for science education programs — Grant criteria.** — The state department of education shall administer a program of matching grants to encourage the expansion or maintenance of science education programs in the state of Idaho. Matching grants shall only be made to nonprofit corporations incorporated or registered in the state of Idaho and which shall have conducted such a science education program for a minimum of one (1) year. Grants shall require the applicant to provide at least one-half ( $\frac{1}{2}$ ) of the financial support for the science education program with money or in-kind contributions.

“Science education programs” include, but are not limited to, demonstration programs intended to encourage knowledge of and interest in the disciplines of science among Idaho’s elementary and secondary school students.

The state department of education shall administer this program with such funds as are appropriated to the science education program. Competing grant applications shall be evaluated and funding decisions shall be made based upon the department’s judgment as to the probable effectiveness of the various proposals in furthering the purposes of this act.

#### **History.**

I.C., § 33-129, as added by 1991, ch. 139, § 3, p. 330.

### **STATUTORY NOTES**

#### **Compiler’s Notes.**

This section was repealed by S.L. 2011, ch. 247, effective April 8, 2011. The repeal by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 repeal became null and void, and this section returned to its pre-2011 provisions.

The term “this act” at the end of the section refers to S.L. 1991, Chapter 139, which is codified as §§ 33-125, 33-128, and 33-129.

## **JUDICIAL DECISIONS**

**Cited in:** Ybarra v. Legis. of Idaho, — Idaho —, 466 P.3d 421 (2020).

**33-130. Criminal history checks for school district employees or applicants for certificates or individuals having contact with students — Statewide list of substitute teachers. —**

(1) The department of education, through the cooperation of the Idaho state police, shall establish a system to obtain a criminal history check on individuals to include, but is not limited to, certificated and noncertificated employees, all applicants for certificates pursuant to chapter 12, title 33, Idaho Code, substitute staff, individuals involved in other types of student training such as practicums and internships, and on all individuals who have unsupervised contact with students in a K-12 setting. The criminal history check shall be based on a completed ten (10) finger fingerprint card or scan and shall include, at a minimum, the following state and national databases:

(a) Idaho bureau of criminal identification; (b) Federal bureau of investigation (FBI) criminal history check; and (c) Statewide sex offender register.

(2) The state department of education shall charge all such individuals a fee necessary to cover the cost of undergoing a criminal history check pursuant to this section. The total fee shall be sufficient to cover the net costs charged by the federal bureau of investigation and the state police. A record of all background checks shall be maintained at the state department of education in a data bank for all employees of a school district with a copy going to the employing school district, when requested at the time of the application or within six (6) months following the performance of the criminal history check. A copy shall also be provided to the applicant upon request.

(3) The state department of education shall maintain a statewide list of substitute teachers. The term “substitute teacher” shall have the meaning as provided in [section 33-512\(15\), Idaho Code](#).

(4) The Idaho state police and the department of education shall implement a joint exercise of powers agreement pursuant to [sections 67-2328 through 67-2333, Idaho Code](#), necessary to implement the provisions of this section.

## **History.**

**I.C., § 33-130**, as added by 1996, ch. 375, § 1, p. 1273, am. 2000, ch. 469, § 80, p. 1450; am. 2008, ch. 349, § 1, p. 961; am. 2015, ch. 201, § 1, p. 614; am. 2017, ch. 115, § 1, p. 266.

## **STATUTORY NOTES**

### **Cross References.**

Bureau of criminal identification, § 67-3003.

Central registry for sexual offenders, § 18-8305.

Idaho state police, § 67-2901 et seq.

### **Amendments.**

The 2008 amendment, by ch. 349, rewrote the section to the extent that a detailed comparison is impracticable.

The 2015 amendment, by ch. 201, added the present designation scheme; and, in subsection (2), substituted “a fee necessary to cover the cost of” for “a fee of forty dollars (\$40.00) for” near the middle of the first sentence and rewrote the second sentence, which formerly read: “The fee shall be sufficient to cover costs charged by the federal bureau of investigation, the state police and the state department of education”.

The 2017 amendment, by ch. 115, substituted the present last two sentences in subsection (2) for the former last sentence, which read: “A record of all background checks shall be maintained at the state department of education in a data bank for all employees of a school district with a copy going to the applicant upon request.”

### **Compiler’s Notes.**

For additional information on FBI criminal history checks, referred to in paragraph (2)(b), see <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi>.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 2 of S.L. 2017, ch. 115 declared an emergency. Approved March 24, 2017.

**33-130A. Criminal history checks for private or parochial school employees or contractors.** — If requested by the principal or governing board of a private or parochial school, the department of education, through the cooperation of the department of law enforcement [Idaho state police], shall establish a system to obtain a criminal history check on employees of the school or persons entering into contracts with the school. The criminal history check and fees shall be as provided in section 33-130, Idaho Code.

**History.**

I.C., § 33-130A, as added by 2000, ch. 310, § 1, p. 1047.

**STATUTORY NOTES**

**Compiler's Notes.**

Following the revision of chapter 29, title 67, Idaho Code, by S.L. 1980, chapter 469, the reference to the “department of law enforcement” in the first sentence should be to the “Idaho state police”.

**33-131. Definitions — Tribal school — Tribal education authority. —**

(1) “Tribal school” means an institution with an educational program that has as its primary purpose providing education in any grade or grades from kindergarten to twelfth grade and that is controlled by the elected governing body of a federally recognized American Indian tribe in Idaho or by a tribal education authority established under the laws of a federally recognized American Indian tribe in Idaho.

(2) “Tribal educational authority” means the authorized governmental agency of a federally recognized Indian tribe, as defined in [25 U.S.C. section 450b](#), that is primarily responsible for:

- (a) Regulating, administering or supervising the formal education of tribal members;
- (b) Facilitating tribal control in all matters relating to the education of Indian children;
- (c) Providing for the development and coordinated education programs, including all preschool, elementary, secondary and higher or vocational programs, funded by the United States bureau of Indian affairs and encouraging tribal cooperation and coordination with entities carrying out all educational programs receiving financial support from other general agencies, state agencies or private entities; and
- (d) Providing for the development and enforcement of tribal education codes relating to the education of Indian children, including tribal education policies and tribal standards applicable to curriculum, personnel, students, facilities and support programs.

**History.**

[I.C., § 33-131](#), as added by 2010, ch. 282, § 1, p. 759.

**STATUTORY NOTES**

**Compiler’s Notes.**

Section 1 of S.L. 2010, ch. 181 and section 1 of S.L. 2010, ch. 282 enacted sections designated as § 33-131. The version of § 33-131 enacted by S.L. 2010, ch. 181 was redesignated by the compiler as § 33-132. That redesignation was made permanent by S.L. 2011, ch. 151, § 13.



**33-132. Local school boards — Internet use policy required.** — (1) As a condition for receiving moneys from the state general fund, each local school district shall file an acceptable internet use policy with the state superintendent of public instruction no later than August 1, 2011, or within one (1) year after the creation of a new district, whichever is later, and every five (5) years thereafter. Such policy shall be approved by the district's board of trustees and shall contain, but not be limited to, provisions that:

(a) Prohibit and prevent the use of school computers and other school owned technology-related services from sending, receiving, viewing or downloading materials that are deemed to be harmful to minors, as defined by [section 18-1514, Idaho Code](#); and

(b) Provide for the selection of technology for the local district's computers to filter or block internet access to obscene materials, materials harmful to minors and materials that depict the sexual exploitation of a minor, as defined in chapter 15, title 18, Idaho Code; and

(c) Establish appropriate disciplinary measures to be taken against persons violating the policy provided for in this section; and

(d) Include a component of internet safety for students that is integrated into the district's instructional program; and

(e) Inform the public that administrative procedures have been adopted to enforce the policy provided for in this section and to handle complaints about such enforcement, and that such procedures are available for review at the district office.

(2) The policy provided for in subsection (1) of this section may include terms, conditions and requirements deemed appropriate by the district's board of trustees including, but not limited to, requiring written parental authorization for internet use by minors or differentiating acceptable uses among elementary, middle and high school students.

(3) The district's superintendent is hereby authorized to take reasonable measures to implement and enforce the provisions of this section.

**History.**

I.C., § 33-131, as added by 2010, ch. 181, § 1, p. 370; am. and redesign. 2011, ch. 151, § 13, p. 414.

**STATUTORY NOTES****Cross References.**

State general fund, § 67-1205.

**Amendments.**

The 2011 amendment, by ch. 151, redesignated this section from § 33-131.

**Compiler's Notes.**

Section 1 of S.L. 2010, ch. 181 and section 1 of S.L. 2010, ch. 282 enacted sections designated as § 33-131. The version of § 33-131 enacted by S.L. 2010, ch. 181 was redesignated by the compiler as § 33-132. That redesignation was made permanent by S.L. 2011, ch. 151, § 13.

**33-133. Definitions — Student data — Use and limitations — Penalties.** — (1) As used in this act, the following terms shall have the following meanings:

- (a) “Agency” means each state board, commission, department, office or institution, educational or otherwise, of the state of Idaho. State agency shall also mean any city, county, district or other political subdivision of the state.
- (b) “Aggregate data” means data collected and/or reported at the group, cohort or institutional level. Aggregate data shall not include personally identifiable information. The minimum number of students shall be determined by the state board of education.
- (c) “Board” means the state board of education.
- (d) “Data system” means the state’s elementary, secondary and postsecondary longitudinal data systems.
- (e) “Department” means the state department of education.
- (f) “District” or “school district” means an Idaho public school district and shall also include Idaho public charter schools.
- (g) “Parent” means parent, parents, legal guardian or legal guardians.
- (h) “Personally identifiable data,” “personally identifiable student data” or “personally identifiable information” includes, but is not limited to: the student’s name; the name of the student’s parent or other family members; the address of the student or student’s family; a personal identifier, such as the student’s social security number, student education unique identification number or biometric record; other indirect identifiers, such as the student’s date of birth, place of birth and mother’s maiden name; and other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty or information requested by a person who the educational

agency or institution reasonably believes knows the identity of the student to whom the education record relates.

(i) “Provisional student data” means new student data proposed for inclusion in the data system.

(j) “Student data” means data collected and/or reported at the individual student level included in a student’s educational record.

(i) “Student data” includes: (1) state and national assessment results, including information on untested public school students; (2) course taking and completion, credits earned and other transcript information; (3) course grades and grade point average; (4) date of birth, grade level and expected graduation date/graduation cohort; (5) degree, diploma, credential attainment and other school exit information such as general educational development and drop-out data; (6) attendance and mobility; (7) data required to calculate the federal four (4) year adjusted secondary cohort graduation rate, including sufficient exit information; (8) discipline reports limited to objective information sufficient to produce the federal annual incident reports, children with disabilities disciplinary reports and discipline reports including students involved with firearms; (9) remediation; (10) special education data; (11) demographic data and program participation information; and (12) files, documents, images or data containing a student’s educational record that are stored in or transmitted through a cloud computing service.

(ii) A student’s educational record shall not include: (1) juvenile delinquency records and criminal records unless required in paragraph (k) of this subsection; (2) medical and health records; (3) student social security number; (4) student biometric information; (5) gun ownership records; (6) sexual orientation; (7) religious affiliation; (8) except for special needs and exceptional students, any data collected pursuant to a statewide assessment via affective computing, including analysis of facial expressions, EEG brain wave patterns, skin conductance, galvanic skin response, heart rate variability, pulse, blood volume, posture and eye tracking, any data that measures psychological resources, mind sets, effortful control, attributes, dispositions, social skills, attitudes or intrapersonal resources.

(k) “Student educational record” means all information directly related to a student and recorded and kept in the data system as that term is defined in this section. Provided however, that the following shall not be kept as part of a student’s permanent educational record: daily assignments, homework, reports, chapter tests or similar assessments or other schoolwork that may be considered daily or weekly work. A student educational record may include information considered to be personally identifiable.

(l) “Student education unique identification number” means the unique student identifier assigned by the state to each student that shall not be or include the social security number of a student in whole or in part.

(m) “Violation” means an act contrary to the provisions of this section that materially compromises the security, confidentiality or integrity of personally identifiable data of one (1) or more students and that results in the unauthorized release or disclosure of such data.

(2) Unless otherwise provided for in this act, the executive office of the state board of education shall be the entity responsible for implementing the provisions of this act. All decisions relating to the collection and safeguarding of student data shall be the responsibility of the executive office of the state board of education.

(3) The state board of education shall:

(a) Create, publish and make publicly available a data inventory and dictionary or index of data elements with definitions of individual student data fields currently in the student data system including:

(i) Any individual student data required to be reported by state and federal education mandates;

(ii) Any individual student data that has been proposed for inclusion in the student data system with a statement regarding the purpose or reason for the proposed collection; and

(iii) Any individual student data collected or maintained with no current purpose or reason.

No less frequently than annually, the state board of education shall update the data inventory and index of data elements provided for in this

subsection.

(b) Develop, publish and make publicly available policies and procedures to comply with the federal family educational rights and privacy act (FERPA) and other relevant privacy laws and policies including, but not limited to the following:

(i) Access to student data in the student data system shall be restricted to: (1) the authorized staff of the state board of education and the state department of education and the board's and the department's vendors who require such access to perform their assigned duties; (2) the district and the district's private vendors who require access to perform their assigned duties and public postsecondary staff who require such access to perform their assigned duties; (3) students and their parents or legal guardians; and (4) the authorized staff of other state agencies in this state as required by law and/or defined by interagency data-sharing agreements. All such data-sharing agreements shall be summarized in a report compiled by the state board of education and submitted no later than January 15 of each year to the senate education committee and the house of representatives education committee;

(ii) Provide that public reports or responses to record requests shall include aggregate data only as that term is defined in subsection (1) of this section;

(iii) Develop criteria for the approval of research and data requests from state and local agencies, the state legislature, researchers and the public: (1) unless otherwise approved by the state board of education, student data maintained shall remain confidential; (2) unless otherwise approved by the state board of education, released student data in response to research and data requests may include only aggregate data; and (3) any approval of the board to release personally identifiable student data shall be subject to legislative approval prior to the release of such information;

(iv) Ensure that any contract entered into by the state board of education or the state department of education includes provisions requiring and governing data destruction dates and specific restrictions on the use of data;

(v) Provide for notification to students and parents regarding their rights under federal and state law; and

(vi) Ensure that all school districts, primary schools, secondary schools and other similar institutions entering into contracts that govern databases, online services, assessments, special education or instructional supports with private vendors shall include in each such contract a provision that private vendors are permitted to use aggregated data; or an individual student's data for secondary uses, but only if the vendor discloses in clear detail the secondary uses and receives written permission from the student's parent or legal guardian. The contract shall also include either of the following: (1) a prohibition on any secondary uses of student data by the private vendor including, but not limited to, sales, marketing or advertising, but permitting the private vendor to process or monitor such data solely to provide and maintain the integrity of the service; or (2) a requirement that the private vendor disclose in detail any secondary uses of student data including, but not limited to, sales, marketing or advertising, and the board shall obtain express parental consent for those secondary uses prior to deployment of the private vendor's services under the contract.

The state board of education and the state department of education shall ensure that any and all private vendors employed or otherwise engaged by the board or the department shall comply with the provisions of this section. Any person determined, in either a civil enforcement action initiated by the board or initiated by the department or in a court action initiated by an injured party, to have violated a provision of this section or any rule promulgated pursuant to this section shall be liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) per violation. In the case of an unauthorized release of student data, the state board of education or the state department of education shall notify the parent or student of the unauthorized release of student data that includes personally identifiable information in a manner consistent with the provisions of [section 28-51-105, Idaho Code](#).

(c) Unless otherwise approved by the state board of education, any data deemed confidential pursuant to this act shall not be transferred to any federal, state or local agency or other organization or entity outside of the state of Idaho, with the following exceptions:

- (i) A student transfers out of state or a school or district seeks help with locating an out-of-state transfer;
  - (ii) A student leaves the state to attend an out-of-state institution of higher education or training program;
  - (iii) A student voluntarily participates in a program for which such a data transfer is a condition or requirement of participation;
  - (iv) The state board of education or the state department of education may share such data with a vendor to the extent it is necessary as part of a contract that governs databases, online services, assessments, special education or instructional supports with a vendor;
  - (v) Pursuant to a written agreement between the two (2) school districts, where a student transfers from an Idaho district abutting upon another state to the nearest appropriate district in such neighboring state in accordance with the provisions of [section 33-1403, Idaho Code](#); or
  - (vi) A student is classified as “migrant” for reporting purposes as required by the federal government in order to assure linkage between the various states of migrant students educational records;
- (d) Develop a detailed data security plan that includes:
- (i) Guidelines for authorizing access to the student data system and to individual student data including guidelines for authentication of authorized access;
  - (ii) Guidelines relating to administrative safeguards providing for the security of electronic and physical data; such guidelines should include provisions relating to data encryption as well as staff training to better ensure the safety and security of data;
  - (iii) Privacy compliance standards;
  - (iv) Privacy and security audits;
  - (v) Breach planning, notification and procedures; and
  - (vi) Data retention and disposition policies;



(e) Ensure routine and ongoing compliance with FERPA, other relevant privacy laws and policies, and the privacy and security policies and procedures developed under the authority of this act, including the performance of compliance audits;

(f) Ensure that any contracts that govern databases, online services, assessments or instructional supports that include student data and are outsourced to private vendors, include express provisions that safeguard privacy and security, contain the restrictions on secondary uses of student data described in subsection (3)(b)(vi) of this section, provides for data destruction, including a time frame for data destruction, and includes penalties for noncompliance with this paragraph; and

(g) Notify the governor and the legislature annually of the following:

(i) New student data proposed for inclusion in the state student data system: (1) any new student data collection proposed by the state board of education becomes a provisional requirement to allow districts and their local data system vendors the opportunity to meet the new requirement; and (2) the state board of education must submit any new provisional student data collection to the governor and the legislature for their approval within one (1) year in order to make the new student data a permanent requirement through the administrative rules process. Any provisional student data collection not approved by the governor and the legislature by the end of the next legislative session expires and must be deleted and no longer collected;

(ii) Changes to existing data collections required for any reason, including changes to federal reporting requirements made by the U.S. department of education;

(iii) An explanation of any exceptions granted by the state board of education in the past year regarding the release or out-of-state transfer of student data;

(iv) The results of any and all privacy compliance and security audits completed in the past year. Notifications regarding privacy compliance and security audits shall not include any information that would pose a security threat to the state or local student information systems or to

the secure transmission of data between state and local systems by exposing vulnerabilities; and

(v) Data collected specific to a grant program where such data is not otherwise included in student data.

(4) The state board of education shall adopt rules to implement the provisions of this act.

(5) Upon the effective date of this act, any existing collection of student data in the data system shall not be considered a new student data collection in accordance with this section.

(6) Unless otherwise prohibited by law or court order, school districts must provide parents or guardians with copies of all of their child's educational records, upon request, if such child has not attained the age of eighteen (18) years.

(7) The state board of education shall develop a model policy for school districts and public charter schools that will govern data collection, access, security and use of such data. The model policy shall be consistent with the provisions of this act. In order to assure that student educational information is treated safely and securely and in a consistent manner throughout the state, each district and public charter school shall adopt and implement the model policy. The state department of education shall provide outreach and training to the districts and public charter schools to help implement the policy. A current copy of such policy shall be posted to the school district's website. Any district or public charter school that fails to adopt, implement and post the policy where any inappropriate release of data occurs shall be liable for a civil penalty not to exceed fifty thousand dollars (\$50,000). Such civil penalty may be imposed per violation. The method of recovery of the penalty shall be by a civil enforcement action brought by the state board of education, with the assistance of the office of the state attorney general, in the district court in and for the county where the violation occurred. All civil penalties collected under this section shall be paid into the general fund of the state.

### **History.**

**I.C., § 33-133**, as added by 2014, ch. 281, § 3, p. 711.

## STATUTORY NOTES

### **Cross References.**

Attorney general, § 67-1401 et seq.

State general fund, § 67-1205.

### **Legislative Intent.**

Section 2 of S.L. 2014, ch. 281 provided: “Legislative Intent. It is the intent of the Legislature to help ensure that student information is safeguarded and that privacy is honored, respected and protected. The Legislature also acknowledges that student information is a vital resource for teachers and school staff in planning responsive education programs and services, scheduling students into appropriate classes and completing reports for educational agencies. Student information is critical in helping educators assist students in successfully graduating from high school and being ready to enter the workforce or postsecondary education. In emergencies, certain information should be readily available to school officials to assist students and their families. A limited amount of this information makes up a student’s permanent record or transcript. The Legislature firmly believes that while student information is important for educational purposes, it is also critically important to ensure that student information is protected, safeguarded and kept private and used only by appropriate educational authorities and then, only to serve the best interests of the student. To that end, this act will help ensure that student information is protected and expectations of privacy are honored.”

### **Federal References.**

The federal family educational rights and privacy act (FERPA), referred to in the introductory paragraph in paragraph (3)(b) and in paragraph (3)(e), is found at [20 USCS § 1232g](#).

### **Compiler’s Notes.**

The term “this act,” as used throughout this section, refers to S.L. 2014, Chapter 281, which is codified only at this section.

The phrase “the effective date of this act” in subsection (5) refers to the effective date of S.L. 2014, Chapter 281, which was effective March 26,

2014.

Section 1 of S.L. 2014, ch. 145, section 3 of S.L. 2014, ch. 281, and section 2 of S.L. 2014, ch. 350 each enacted a new provision to the Idaho Code designated as § 33-133. Because of its earlier effective date, the provisions enacted by S.L. 2014, ch. 281 have been retained at that code section assignment. Section 2 of S.L. 2014, ch 350 has been redesignated, through the use of brackets, as § 33-134. Section 1 of S.L. 2014, ch. 145 has been redesignated, through the use of brackets, as § 33-135. The redesignations of S.L. 2014, ch. 350, § 2 and S.L. 2014, ch. 145, § 1 were made permanent by S.L. 2015, ch. 244, §§ 17 and 18.

Section 1 of S.L. 2014, ch. 281 provided: “Short Title. This act shall be known as the ‘Student Data Accessibility, Transparency and Accountability Act of 2014.’”

The abbreviation enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 4 of S.L. 2014, ch. 281 declared an emergency. Approved March 26, 2014.

**33-134. Assessment item review committee. —**

(1)(a) The state board of education shall establish a committee consisting of thirty (30) individuals, representing each of the six (6) education regions of the state established by the state board of education, to review all summative computer adaptive test questions. The committee's review shall include reviews for bias and sensitivity. The committee is authorized to make recommendations to the state board of education and the state department of education to revise or eliminate summative computer adaptive test questions from state assessments. The state board of education shall make the final determination regarding the adoption or rejection of the committee's recommendations. The committee established shall include the following members appointed by the state board of education:

- (i) Two (2) parents of public school or public charter school students, selected from each of the six (6) education regions in this state;
  - (ii) One (1) public school or public charter school teacher, selected from each of the six (6) education regions in this state;
  - (iii) One (1) member who is an administrator of a school district or public charter school, selected from each of the six (6) education regions in this state; and
  - (iv) One (1) member from the district board of trustees or public charter school board of directors, selected from each of the six (6) education regions in this state.
- (b) The state department of education shall provide staff support to the review committee.
- (c) The term of office of each committee member appointed shall be four (4) years.
- (d) The president of the state board of education shall adjust the length of terms to stagger the terms of committee members so that approximately one-half ( $\frac{1}{2}$ ) of the committee members are appointed every two (2) years.

(e) No committee member may receive compensation or benefits for the member's service on the committee.

(f) The state board of education may solicit recommendations for committee members from districts, public charter schools and other public education stakeholders.

(2) The state board of education shall determine when committee recommendations must be submitted to the state board of education and the state department of education, provided that any such submission date must provide adequate time for the committee to review summative computer adaptive test questions before the assessment is administered to students. Adequate time means no fewer than thirty (30) days from the date the committee is notified of the summative computer adaptive test questions.

(3) The state board is hereby authorized to promulgate rules to implement the provisions of this section.

#### **History.**

I.C., § 33-133, as added by 2014, ch. 350, § 2, p. 875; am. 2015, ch. 244, § 17, p. 1008.

### **STATUTORY NOTES**

#### **Amendments.**

The 2015 amendment, renumbered this section, originally enacted as § 33-133.

#### **Legislative Intent.**

Section 1 of S.L. 2014, ch. 350, provided: "Legislative Intent. It is the intent of the Legislature to ensure that parents of students, teachers and administrators in Idaho's public education system can participate in reviewing the type and kinds of questions that are posed in state assessments. This participation ensures that Idaho maintains its sovereignty with respect to the education of our children while ensuring that state assessments are appropriate and provide a reasonable tool to assess the academic growth of our students as well as assessing how well our education system is working."

### **Compiler's Notes.**

For education regions of state, see <https://www.sde.idaho.gov/academic/math/files/mti-tmt/files/map/Idaho-Counties-Map-with-Regions.pdf>.

Section 1 of S.L. 2014, ch. 145, section 3 of S.L. 2014, ch. 281, and section 2 of S.L. 2014, ch. 350 each enacted a new provision to the Idaho Code designated as § 33-133. Because of its earlier effective date, the provisions enacted by S.L. 2014, ch. 281 have been retained at that code section assignment. Section 2 of S.L. 2014, ch 350 was redesignated, through the use of brackets, as § 33-134 and then permanently by S.L. 2015, ch. 244, § 18. Section 1 of S.L. 2014, ch. 145 was redesignated, through the use of brackets, as § 33-135. Pursuant to S.L. 2015, ch. 244, § 17, the redesignation of this section as § 33-134 was made permanent, effective July 1, 2015.

**33-135. Teachers — classroom size — reporting.** — (1) Definitions. The following terms have the following meanings:

- (a) “Teacher” means an individual holding a teaching certificate issued by the state department of education.
- (b) “Classroom” means a place where groups of students meet for instruction in a particular subject, including students enrolled in virtual schools or charter schools.
- (c) “Classroom instructor” means an individual holding a teaching certificate issued by the state department of education and who has been assigned to teach students one (1) or more subjects.
- (d) “Class size” means the number of students who regularly appear in an instructor’s classroom or on a class roster and for whom the classroom instructor is primarily responsible and accountable.
- (e) “Pupil-teacher ratio” means the total number of students in a school building divided by the total number of teachers working in that school building. For the purposes of this act, the term “school building” also includes virtual charter schools.
- (f) “Total caseload” means the total number of students serviced by classroom instructors in a secondary school setting.

(2) Reporting.

- (a) The state department of education shall gather statistical information using a unified approach that will demonstrate: (i) The total number of teachers actively employed within an Idaho school district listed by individual school building; (ii) The pupil-teacher ratio for every Idaho school district listed by individual school building;
  - (iii) The number of elementary classroom teachers in every Idaho school building listed by grade and subject; (iv) The number of secondary classroom teachers in every Idaho school building listed by grade and subject; (v) The class size in every Idaho elementary school building listed by teacher; and



(vi) The class size, by each section and by total caseload, in every secondary school building listed by teacher.

(b) The report under this subsection shall be prepared and published once annually by January 1 and shall be made available on a public website maintained by the state department of education.

(c) For purposes of this subsection, each teacher will be identified by a unique numeric identifier and not by individual name.

(3) Statewide database. The state department of education shall maintain a statewide database of the statistical information collected and published.

### **History.**

**I.C., § 33-133**, as added by 2014, ch. 145, § 1, p. 390; am. 2015, ch. 244, § 18, p. 1008.

## **STATUTORY NOTES**

### **Amendments.**

The 2015 amendment, renumbered this section, originally enacted as § 33-133.

### **Compiler's Notes.**

The term "this act" in paragraph (1)(e) refers to S.L. 2014, Chapter 145, which is codified only at this section.

Section 1 of S.L. 2014, ch. 145, section 3 of S.L. 2014, ch. 281, and section 2 of S.L. 2014, ch. 350 each enacted a new provision to the Idaho Code designated as § 33-133. Because of its earlier effective date, the provisions enacted by S.L. 2014, ch. 281 have been retained at that code section assignment. Section 2 of S.L. 2014, ch 350 was redesignated, through the use of brackets, as § 33-134 and then permanently by S.L. 2015, ch. 244, § 17. Section 1 of S.L. 2014, ch. 145 has been redesignated, through the use of brackets, as § 33-135. Pursuant to S.L. 2015, ch. 244, § 18, the redesignation of this section as § 33-135 was made permanent, effective July 1, 2015.

**33-136. Suicide prevention in schools.** — (1) The state board of education shall adopt rules supporting suicide awareness and prevention training each year for public school personnel. This training may be provided within the framework of existing in-service training programs offered by the state board of education and the state department of education or as part of professional development activities.

(2)(a) The state board of education and state department of education shall, in consultation with the state department of health and welfare, education and health care stakeholders, and suicide prevention experts, develop a list of approved training materials to fulfill the requirements of this section.

(b) Approved materials shall include training on how to identify appropriate mental health services, both within the school and the larger community, and when and how to refer youth and their families to those services.

(c) Approved materials may include programs that can be completed through self-review of suitable suicide prevention materials.

(3)(a) Each public school district shall adopt a policy on student suicide prevention. Such policy shall, at a minimum, address procedures relating to suicide prevention, intervention and postvention. As used in this paragraph, “postvention” means counseling or other social care given to students after another student’s suicide or attempted suicide.

(b) To assist school districts in developing policies for student suicide prevention, the state department of education shall develop and maintain a model policy, or adopt an existing policy as a model policy, to serve as a guide for school districts in accordance with this section.

(4)(a) No person shall have a cause of action for any loss or damage caused by any act or omission resulting from the implementation of the provisions of this section or resulting from any training required by this section, or lack thereof.

(b) The training required by the provisions of this section, or lack thereof, shall not be construed to impose any specific duty of care.

(c) Nothing in this subsection shall be construed to conflict with the provisions of [section 33-512B, Idaho Code](#).

**History.**

[I.C., § 33-136](#), as added by 2018, ch. 263, § 1, p. 629.

**STATUTORY NOTES**

**Cross References.**

State department of health and welfare, § 56-1001 et seq.

**33-137. Digital and online library resources for K-12 students. — (1)**

A school district or public charter school may offer digital or online library resources to students in kindergarten through grade 12 only if the vendor or other person or entity providing the resources verifies that all the resources will comply with the provisions of subsection (2) of this section.

(2) Digital or online library resources offered by school districts or public charter schools to students in kindergarten through grade 12 must have safety policies and technology protection measures that:

(a) Prohibit and prevent a user of the resource from sending, receiving, viewing, or downloading materials that are deemed to be harmful to minors, as defined by [section 18-1514, Idaho Code](#); and

(b) Filter or block access to obscene materials, materials harmful to minors, and materials that depict the sexual exploitation of a minor, as defined in chapter 15, title 18, Idaho Code.

(3) Notwithstanding any contract provision to the contrary, if a provider of digital or online library resources fails to comply with the requirements of subsection (2) of this section, the school district or public charter school may withhold further payments, if any, to the provider pending verification of compliance with that subsection.

(4) If a provider of digital or online library resources fails to timely verify that the provider is in compliance with the requirements of subsection (1) [(2)] of this section, the school district or public charter school may consider the provider's act of noncompliance a breach of contract.

(5) No later than December 1 of each year, the Idaho commission for libraries shall submit to the governor and the senate and house of representatives education committees an aggregate written report on any issues related to provider compliance with technology protection measures required by subsection (2) of this section.

**History.**

[I.C., § 33-137](#), as added by 2020, ch. 274, § 1, p. 808.

## **STATUTORY NOTES**

### **Cross References.**

Idaho commission for libraries, § 33-2501 et seq.

Sexual exploitation of child, § 18-1507.

### **Compiler's Notes.**

The bracketed insertion in subsection (4) was added by the compiler to correct the enacting legislation.



## **CHAPTER 2**

### **ATTENDANCE AT SCHOOLS**

#### **Section.**

33-201. School age.

33-202. School attendance compulsory.

33-203. Dual enrollment.

33-204. Exemption for cause.

33-205. Denial of school attendance.

33-206. Habitual truant defined.

33-207. Proceedings against parents or guardians.

33-208. Kindergartens and child attendance not compulsory.

33-209. Transfer of student records — Duties.

33-210. Students using or under the influence of alcohol or controlled substances.

33-211. Students' driver's licenses.

33-212. Educational opportunity for military children. [Repealed.]

**33-201. School age.** — The services of the public schools of this state are extended to any acceptable person of school age. “School age” is defined as including all persons resident of the state, between the ages of five (5) and twenty-one (21) years. For the purposes of this section, the age of five (5) years shall be attained when the fifth anniversary of birth occurs on or before the first day of September of the school year in which the child is to enroll in kindergarten. For a child enrolling in the first grade, the age of six (6) years must be reached on or before the first day of September of the school year in which the child is to enroll. Any child of the age of five (5) years who has completed a private or public out-of-state kindergarten for the required four hundred fifty (450) hours but has not reached the “school age” requirement in Idaho shall be allowed to enter the first grade.

For resident children with disabilities who qualify for special education and related services under the federal individuals with disabilities education act (IDEA) and subsequent amendments thereto, and applicable state and federal regulations, “school age” shall begin at the attainment of age three (3) and shall continue through the semester of school in which the student attains the age of twenty-one (21) years.

### **History.**

1963, ch. 13, § 24, p. 27; am. 1975, ch. 42, § 3, p. 73; am. 1988, ch. 290, § 1, p. 928; am. 1989, ch. 126, § 1, p. 276; am. 1993, ch. 121, § 1, p. 310; am. 1996, ch. 311, § 1, p. 1018; am. 1998, ch. 23, § 1, p. 138.

## **STATUTORY NOTES**

### **Federal References.**

The federal individual with disabilities education act, referred to in the last paragraph, is codified as [20 USCS § 1400 et seq.](#)

### **Compiler’s Notes.**

Section 1 of S.L. 1975, ch. 42 read: “The establishment and maintenance of a general and uniform system of free common public schools, including public kindergartens, is the responsibility of the people of the state of Idaho.



In recognition of this, provision for state supported public kindergartens shall be established.”

The abbreviation enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 2 of S.L. 1996, ch. 311 declared an emergency. Approved March 18, 1996.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law Free Tuition.**

Right of child to attend school without payment of tuition depends on parents’ legal residence. [Smith v. Binford, 44 Idaho 244, 256 P. 366 \(1927\)](#).

## **OPINIONS OF ATTORNEY GENERAL**

### **Minimum Age.**

All children, even those who have completed a portion of kindergarten prior to moving into Idaho during the school year, must meet the “school age” requirement of turning five prior to the sixteenth day of August [now September 1] in order to be allowed to enroll in an Idaho public school kindergarten. OAG 93-4.

### **Discretionary Placement.**

The first grade age requirement of six years old prior to August 16 [now September 1] applies only to those students who have not completed kindergarten. OAG 93-4.

If a child does not attend a kindergarten, then he or she must turn six prior to the sixteenth day of August [now September 1] to be enrolled in the first grade. If this requirement cannot be met, the child should be placed in kindergarten. However, once the child is properly enrolled, it is within the discretion of the school officials, thereafter, to change that placement if it is in the child’s best interest. OAG 93-4.

**33-202. School attendance compulsory.** — The parent or guardian of any child resident in this state who has attained the age of seven (7) years at the time of the commencement of school in his district, but not the age of sixteen (16) years, shall cause the child to be instructed in subjects commonly and usually taught in the public schools of the state of Idaho. To accomplish this, a parent or guardian shall either cause the child to be privately instructed by, or at the direction of, his parent or guardian; or enrolled in a public school or public charter school, including an on-line or virtual charter school or private or parochial school during a period in each year equal to that in which the public schools are in session; there to conform to the attendance policies and regulations established by the board of trustees, or other governing body, operating the school attended.

**History.**

1963, ch. 13, § 25, p. 27; am. 1992, ch. 243, § 1, p. 721; am. 2009, ch. 103, § 2, p. 316.

**STATUTORY NOTES**

**Cross References.**

School trustees, to report truants, § 20-527.

**Amendments.**

The 2009 amendment, by ch. 103, at the beginning of the last sentence, substituted the language beginning “To accomplish this” and ending “or virtual charter school or” for “Unless the child is otherwise comparably instructed, the parent or guardian shall cause the child to attend a public.”

**JUDICIAL DECISIONS**

Analysis

Constitutionality.

Legislative intent.

Constitutionality.

Whereas the reader of this section is told that a child of school age is to be instructed in subjects commonly and usually taught in the public schools in a manner comparable to that of instruction in the public schools and in conformance with those schools' attendance policies and regulations, and since anyone sincerely desiring to comply with the law has ready access through the department of education to the list of subjects required to be taught, and to the local school district's policies and regulations, this section is not unconstitutional for vagueness. *Bayes v. State*, 117 Idaho 96, 785 P.2d 660 (Ct. App. 1989).

### **Legislative Intent.**

The legislative scheme providing that a petition for the initial determination of whether a child is being adequately educated will be filed pursuant to the Youth Rehabilitation Act (YRA) (now Juvenile Corrections Act) is to ensure that a determination as to the adequacy of a child's education is made by a court of competent jurisdiction without the stigma of criminal proceedings attaching. Even more obvious is society's objective, as expressed by the legislature in the enactment of the compulsory education statutes and the YRA [now JCA], to have Idaho's children educated so that they may be productive citizens, not disadvantaged by lack of education adequate to meet the demands of modern life. The goal is not to label children "juvenile delinquents," by bringing them before the courts, but to achieve society's objective by positive and orderly resolution of the parties' differences within an impartial legal framework. *Bayes v. State*, 117 Idaho 96, 785 P.2d 660 (Ct. App. 1989).

**Cited in:** *Segali v. Idaho Youth Ranch, Inc.*, 738 F. Supp. 1302 (D. Idaho 1990); *Mickelsen v. School Dist. No. 25*, 127 Idaho 401, 901 P.2d 508 (1995).

## **OPINIONS OF ATTORNEY GENERAL**

### **Valid Law.**

The compulsory attendance law is valid and enforceable. OAG 83-12.

### **Local School Board.**

The local school board must determine whether the requirements of this section are being met. OAG 83-12.

**Child Protective Act.**

The Child Protective Act, § 16-1601 et seq., may be available as a means of addressing situations in which a child is not attending a public school. OAG 83-12.

**RESEARCH REFERENCES**

**A.L.R.** — What constitutes a private, parochial, or denominational school within statute making attendance at such school a compliance with compulsory school attendance law. [65 A.L.R.3d 1222](#).

**33-203. Dual enrollment.** — (1) The parent or guardian of a child of school age who is enrolled in a nonpublic school or a public charter school shall be allowed to enroll the student in any public school, including another public charter school, for dual enrollment purposes. The board of trustees of the school district or board of directors of the public charter school shall adopt procedures governing enrollment pursuant to this section. If enrollment in a specific program reaches the maximum for the program, priority for enrollment shall be given to a student who is enrolled full time in the public school. In the case of dual enrollment in a public charter school, the student who is dually enrolled shall not count toward the public charter school's maximum enrollment restrictions. The dually enrolled student's primary education provider shall be the provider in which the student is registered for the majority of the coursework. At no time may the dual enrollment provisions be used to circumvent a public charter school's lottery requirements.

(2) Any student participating in dual enrollment may enter into any program in the public school available to other students, subject to compliance with the eligibility requirements herein and the same responsibilities and standards of behavior and performance that apply to any student's participation in the activity, except that the academic eligibility requirements for participation in nonacademic activities are as provided for herein.

(3) All schools shall be allowed to include dually enrolled nonpublic school and public school students for the purposes of state funding only to the extent of the student's participation in the public school programs.

(4) Oversight of academic standards relating to participation in nonacademic public school activities shall be the responsibility of the primary education provider for that student. In order for any nonpublic school student or public school student to participate in nonacademic public school activities for which public school students must demonstrate academic proficiency or eligibility, the nonpublic school or public school student shall demonstrate composite grade-level academic proficiency on any state board of education recognized achievement test, portfolio, or other

mechanism as provided for in state board of education rules. Additionally, a student shall be eligible if he achieves a minimum composite, core or survey test score within the average or higher-than-average range as established by the test service utilized on any nationally normed test. Demonstrated proficiency shall be used to determine eligibility for the current and next following school years. School districts and public charter schools shall provide to nonpublic students who wish to participate in dual enrollment activities the opportunity to take state tests or other standardized tests given to all regularly enrolled public school students.

(5) A public school student who has been unable to maintain academic eligibility is ineligible to participate in nonacademic public school activities as a nonpublic school or public charter school student for the duration of the school year in which the student becomes academically ineligible and for the following academic year.

(6) A nonpublic school or public school student participating in nonacademic public school activities must reside within the attendance boundaries of the school for which the student participates.

(7) Dual enrollment shall include the option of joint enrollment in a regular public school and an alternative public school program. The state board of education shall establish rules that provide funding to school districts for each student who participates in both a regular public school program and an alternative public school program.

(8) Dual enrollment shall include the option of enrollment in a postsecondary institution. Any credits earned from an accredited postsecondary institution shall be credited toward state board of education high school graduation requirements.

(9) A nonpublic student is any student who receives educational instruction outside a public school classroom and such instruction can include, but is not limited to, a private school or a home school.

### **History.**

**I.C., § 33-203**, as added by 1995, ch. 224, § 1, p. 775; am. 1999, ch. 387, § 1, p. 1081; am. 2002, ch. 106, § 1, p. 289; am. 2017, ch. 62, § 1, p. 151.

### **STATUTORY NOTES**

**Prior Laws.**

Former § 33-203, which comprised S.L. 1963, ch. 13, § 26, p. 27, was repealed by S.L. 1979, ch. 71, § 1.

**Amendments.**

The 2017 amendment, by ch. 62, in subsection (1), inserted “including another public charter school” in the first sentence, inserted “or board of directors of the public charter school” in the second sentence, deleted “noncharter” preceding “school” at the end of the third sentence, and added the present last three sentences; in subsection (3), substituted “All schools” for “Any school district” and “public school” for “public charter school”; in subsection (4), substituted “education” for “educational” in the first sentence, deleted “charter” preceding “school student” twice in the second sentence, and inserted “and public charter schools” in the last sentence; and deleted “charter” preceding “school student” in subsection (6).

**33-204. Exemption for cause.** — When a licensed physician or psychiatrist shall state in writing to the board of trustees of a school district that the physical, mental or emotional condition of a child does not permit attendance at school, and a petition is filed with the board by the parent or guardian of the child requesting such child to be exempt from the provisions of section 33-202, the board of trustees may at its discretion grant the requested exemption during the existence of such condition. The board may, from time to time as it may determine, require additional examination of the child and a report thereon.

**History.**

1963, ch. 13, § 27, p. 27.



**33-205. Denial of school attendance.** — The board of trustees may deny enrollment, or may deny attendance at any of its schools by expulsion, to any pupil who is an habitual truant, or who is incorrigible, or whose conduct, in the judgment of the board, is such as to be continuously disruptive of school discipline, or of the instructional effectiveness of the school, or whose presence in a public school is detrimental to the health and safety of other pupils, or who has been expelled from another school district in this state or any other state. Any pupil having been denied enrollment or expelled may be enrolled or readmitted to the school by the board of trustees upon such reasonable conditions as may be prescribed by the board; but such enrollment or readmission shall not prevent the board from again expelling such pupil for cause.

Provided however, the board shall expel from school for a period of not less than one (1) year, twelve (12) calendar months, or may deny enrollment to, a student who has been found to have carried a weapon or firearm on school property in this state or any other state, except that the board may modify the expulsion or denial of enrollment order on a case-by-case basis. Discipline of students with disabilities shall be in accordance with the requirements of federal law part B of the individuals with disabilities education act and section 504 of the rehabilitation act. An authorized representative of the board shall report such student and incident to the appropriate law enforcement agency.

No pupil shall be expelled nor denied enrollment without the board of trustees having first given written notice to the parent or guardian of the pupil, which notice shall state the grounds for the proposed expulsion or denial of enrollment and the time and place where such parent or guardian may appear to contest the action of the board to deny school attendance, and which notice shall also state the rights of the pupil to be represented by counsel, to produce witnesses and submit evidence on his own behalf, and to cross-examine any adult witnesses who may appear against him. Within a reasonable period of time following such notification, the board of trustees shall grant the pupil and his parents or guardian a full and fair hearing on the proposed expulsion or denial of enrollment. However, the board shall allow a reasonable period of time between such notification and the holding

of such hearing to allow the pupil and his parents or guardian to prepare their response to the charge. Any pupil who is within the age of compulsory attendance, who is expelled or denied enrollment as herein provided, shall come under the purview of the juvenile corrections act, and an authorized representative of the board shall, within five (5) days, give written notice of the pupil's expulsion to the prosecuting attorney of the county of the pupil's residence.

The superintendent of any district or the principal of any school may temporarily suspend any pupil for disciplinary reasons, including student harassment, intimidation or bullying, or for other conduct disruptive of good order or of the instructional effectiveness of the school. A temporary suspension by the principal shall not exceed five (5) school days in length; and the school superintendent may extend the temporary suspension an additional ten (10) school days. Provided, that on a finding by the board of trustees that immediate return to school attendance by the temporarily suspended student would be detrimental to other pupils' health, welfare or safety, the board of trustees may extend the temporary suspension for an additional five (5) school days. Prior to suspending any student, the superintendent or principal shall grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons. Any pupil who has been suspended may be readmitted to the school by the superintendent or principal who suspended him upon such reasonable conditions as said superintendent or principal may prescribe. The board of trustees shall be notified of any temporary suspensions, the reasons therefor, and the response, if any, thereto.

The board of trustees of each school district shall establish the procedure to be followed by the superintendent and principals under its jurisdiction for the purpose of effecting a temporary suspension, which procedure must conform to the minimal requirements of due process.

### **History.**

1963, ch. 13, § 28, p. 27; am. 1973, ch. 294, § 1, p. 618; am. 1976, ch. 86, § 1, p. 293; am. 1978, ch. 67, § 1, p. 135; am. 1992, ch. 47, § 1, p. 149; am. 1995, ch. 248, § 2, p. 819; am. 1995, ch. 250, § 1, p. 825; am. 1995, ch. 252, § 1, p. 827; am. 1998, ch. 186, § 1, p. 680; am. 2002, ch. 348, § 1, p. 994; am. 2006, ch. 313, § 1, p. 969.

## STATUTORY NOTES

### **Cross References.**

Discipline of unruly pupils, § 33-512.

### **Amendments.**

This section was amended by three 1995 acts which appear to be compatible and have been compiled together.

The 1995 amendment, by ch. 248, § 2, added the second paragraph.

The 1995 amendment, by ch. 250, § 1, in the fourth paragraph in the second sentence added “by the principal” following “temporary suspension”; added “and the school superintendent may extend the temporary suspension an additional ten (10) school days.” at the end of the sentence and created the third sentence by substituting “Provided” for “provided”.

The 1995 amendment, by ch. 252, § 1, in the first paragraph at the end of the first sentence added “or who has been expelled from another school district”; in the third paragraph in the first sentence added “nor denied enrollment” following “No pupil shall be expelled”; and “or denial of enrollment” preceding “and the time and place”; at the end of the second sentence added “or denial of enrollment”; and in the fourth sentence added “or denied enrollment” preceding “as herein provided”.

The 2006 amendment, by ch. 313, inserted “including student harassment, intimidation or bullying” near the beginning of the fourth paragraph.

### **Federal References.**

Part B of the individuals with disabilities education act, referred to in the second paragraph, is codified as [20 USCS § 1411 et seq.](#)

Section 504 of the rehabilitation act of 1973, referred to in the second paragraph, is codified as [29 USCS § 794.](#)

### **Compiler’s Notes.**

The juvenile corrections act, referred to in the third paragraph, is codified as § 20-501 et seq.

## JUDICIAL DECISIONS

### Analysis

Discretion of board.

Regulation as to appearance.

#### **Discretion of Board.**

Students were properly expelled from school for having a pellet gun on school property in violation of the federal firearms laws and district policy, where the students were provided adequate notice, and a hearing, and the school board acted within the scope of its discretion under this section. *Rogers v. Gooding Pub. Joint Sch. Dist. No. 231*, 135 Idaho 480, 20 P.3d 16 (2001), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

#### **Regulation as to Appearance.**

A regulation requiring that students in a high school keep their hair length “off the eyes, off the ear, and off the collar” was held unconstitutional, when the school authorities failed to show that there was any substantial health, safety, academic or disciplinary problem created by the wearing of long hair. *Murphy v. Pocatello School Dist. No. 25*, 94 Idaho 32, 480 P.2d 878 (1971).

**Cited in:** *Mickelsen v. School Dist. No. 25*, 127 Idaho 401, 901 P.2d 508 (1995).

## RESEARCH REFERENCES

**A.L.R.** — Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities. 11 A.L.R.3d 996.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college. 32 A.L.R.3d 864.

School’s violation of student’s substantive due process rights by suspending or expelling student. 90 A.L.R.6th 235.

School's Violation of Parents' Substantive Due Process Rights Due to Their Child's Suspension or Expulsion. 91 A.L.R.6th 365.

**33-206. Habitual truant defined.** — (1) An habitual truant is:

(a) Any public school pupil who, in the judgment of the board of trustees, or the board's designee, repeatedly has violated the attendance regulations established by the board; or (b) Any child whose parents or guardians, or any of them, have failed or refused to cause such child to be instructed as provided in [section 33-202, Idaho Code](#).

(2) A child who is an habitual truant shall come under the purview of the juvenile corrections act if he or she was within the age of compulsory attendance at the time of the violations.

**History.**

1963, ch. 13, § 29, p. 27; am. 2002, ch. 348, § 2, p. 994; am. 2005, ch. 60, § 1, p. 217; am. 2010, ch. 278, § 1, p. 718.

**STATUTORY NOTES**

**Amendments.**

The 2010 amendment, by ch. 278, in paragraph (1)(a), inserted “or the board’s designee”; and in subsection (2), substituted “was within the age” for “is within the age” and added “at the time of the violations.”

**Compiler’s Notes.**

The juvenile corrections act, referred to in subsection (2), is codified as § 20-501 et seq.

**JUDICIAL DECISIONS**

**Legislative Intent.**

The legislative scheme providing that a petition for the initial determination of whether a child is being adequately educated will be filed pursuant to the Youth Rehabilitation Act (YRA) [now Juvenile Corrections Act (JCA)] is to ensure that a determination as to the adequacy of a child’s education is made by a court of competent jurisdiction without the stigma of criminal proceedings attaching. Even more obvious is society’s objective,

as expressed by the legislature in the enactment of the compulsory education statutes and the YRA [JCA], to have Idaho's children educated so that they may be productive citizens, not disadvantaged by lack of education adequate to meet the demands of modern life. *Bayes v. State*, 117 Idaho 96, 785 P.2d 660 (Ct. App. 1989).

## **OPINIONS OF ATTORNEY GENERAL**

### **Expulsion.**

Expulsion is not a prerequisite to proceeding under this section. OAG 83-12.

**33-207. Proceedings against parents or guardians.** — (1) Whenever the parents or guardians of any child between the ages of seven (7) years, as qualified in section 33-202, Idaho Code, and sixteen (16) years, have failed, neglected or refused to place the child in school as provided in this chapter or to have the child instructed as defined in section 33-202, Idaho Code, or knowingly have allowed a pupil to become an habitual truant, proceedings shall be brought against such parent or guardian under the provisions of the juvenile corrections act or as otherwise provided in subsection (2) of this section.

(2) Whenever it is determined by the board of trustees of any school district that a child enrolled in public school is an habitual truant, as defined in [section 33-206, Idaho Code](#), an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the child's residence. Proceedings may be brought directly against any parent or guardian of a public school pupil who is found to have knowingly allowed such pupil to become an habitual truant, and such parent or guardian shall be guilty of a misdemeanor.

(3) Whenever it is determined by the board under provisions providing due process of law for the student and his or her parents that the parents or guardians of any child not enrolled in a public school are failing to meet the requirements of [section 33-202, Idaho Code](#), an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the pupil's residence and recommend that a petition shall be filed in the magistrates division of the district court of the county of the pupil's residence, in such form as the court may require under the provisions of [section 20-510, Idaho Code](#).

### **History.**

1963, ch. 13, § 30, p. 27; am. 2004, ch. 23, § 5, p. 25; am. 2005, ch. 60, § 2, p. 217; am. 2009, ch. 103, § 3, p. 316.

## **STATUTORY NOTES**

### **Cross References.**



Juvenile Corrections Act, § 20-501 et seq.

Magistrate division of district court, § 1-2201 et seq.

Penalty for misdemeanor where none prescribed, § 18-113.

### **Amendments.**

The 2009 amendment, by ch. 103, designated the first paragraph as subsection (1), and therein substituted “have the child instructed as defined in [section 33-202, Idaho Code](#)” for “have the child comparably instructed.”

## **JUDICIAL DECISIONS**

### **Legislative Intent.**

The legislative scheme providing that a petition for the initial determination of whether a child is being adequately educated will be filed pursuant to the Youth Rehabilitation Act [now Juvenile Corrections Act] is to ensure that a determination as to the adequacy of a child’s education is made by a court of competent jurisdiction without the stigma of criminal proceedings attaching. Even more obvious is society’s objective, as expressed by the legislature, to have Idaho’s children educated so that they may be productive citizens, not disadvantaged by lack of education adequate to meet the demands of modern life. [Bayes v. State, 117 Idaho 96, 785 P.2d 660 \(Ct. App. 1989\)](#).

**33-208. Kindergartens and child attendance not compulsory.** — It shall not be compulsory for individual school districts to establish a kindergarten program; and it shall not be mandatory for a child who is eligible by age for attendance to enroll in an established public kindergarten.

**History.**

I.C., § 33-208, as added by 1975, ch. 42, § 2, p. 73.

**33-209. Transfer of student records — Duties.** — Whenever a student transfers from one (1) school to another, within the district, within the state, or elsewhere, and the sending school is requested to forward student records, the sending school shall respond by forwarding a certified copy of the transferred student's record within ten (10) days, except as provided in section 18-4511, Idaho Code. When the school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information shall be included in the transfer of records but shall be contained in a sealed envelope, marked to indicate the confidential nature of the contents, and addressed to the principal or other administrative officer of the school.

The parent or guardian of a student transferring from out-of-state to a school within the state of Idaho is required, if requested, to furnish the school within this state accurate copies of the student's school records, including records containing information concerning violent or disruptive behavior or disciplinary action involving the student. This information shall be contained in a sealed envelope, marked to indicate the confidential nature of the contents, and addressed to the principal or other administrative officer of the school.

Failure of the parent or guardian to furnish the required records, or failure to request of the administration of the previous school to provide the required records, shall constitute adequate grounds to deny enrollment to the transferring student or to suspend or expel the student if already enrolled.

**History.**

I.C., § 33-209, as added by 1994, ch. 174, § 1, p. 401; am. 1998, ch. 186, § 2, p. 680.

**33-210. Students using or under the influence of alcohol or controlled substances.** — (1) It is legislative intent that parental involvement in all aspects of a child's education in the public school system remain a priority. Substance abuse prevention programs and counseling for students attending public schools are no exception. Consequently, it is the duty of the board of trustees of each school district, including specially chartered school districts, and governing boards of charter schools, to adopt and implement policies specifying how personnel shall respond when a student discloses or is reasonably suspected of using or being under the influence of alcohol or any controlled substance defined by section 37-2732C, Idaho Code. Such policies shall include provisions that anonymity will be provided to the student on a faculty "need to know" basis, when a student voluntarily discloses using or being under the influence of alcohol or any controlled substance while on school property or at a school function, except as deemed reasonably necessary to protect the health and safety of others. Notification of the disclosure and availability of counseling for students shall be provided to parents, the legal guardian or child's custodian. However, once a student is reasonably suspected of using or being under the influence of alcohol or a controlled substance in violation of section 37-2732C, Idaho Code, regardless of any previous voluntary disclosure, the school administrator or designee shall contact the student's parent, legal guardian or custodian, and report the incident to law enforcement. The fact that a student has previously disclosed use of alcohol or a controlled substance shall not be deemed a factor in determining reasonable suspicion at a later date.

(2) In addition to policies adopted pursuant to this section, students may, at the discretion of the district board of trustees or governing board of a charter school, be subject to other disciplinary or safety policies, regardless whether the student voluntarily discloses or is reasonably suspected of using or being under the influence of alcohol or a controlled substance in violation of district or charter school policy or [section 37-2732C, Idaho Code](#).

(3) The district board of trustees or the governing board of the charter school shall ensure that procedures are developed for contacting law

enforcement and the student's parents, legal guardian or custodian regarding a student reasonably suspected of using or being under the influence of alcohol or a controlled substance. District and charter school policies formulated to meet the provisions of [section 37-2732C, Idaho Code](#), and this section shall be made available to each student, parent, guardian or custodian by August 31, 2002, and thereafter as provided by [section 33-512\(6\), Idaho Code](#).

(4) Any school district employee or independent contractor of an educational institution who has a reasonable suspicion that a student is using or is under the influence of alcohol or a controlled substance and, acting upon that suspicion, reports that suspicion to a school administrator or initiates procedures adopted by the board of trustees or governing board of the charter school pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report. Any person who reports in bad faith or with malice shall not be protected by this section. Employees and independent contractors of educational institutions who intentionally harass a student through the misuse of the authority provided in this section shall not be immune from civil liability arising from the wrongful exercise of that authority and shall be guilty of a misdemeanor punishable by a fine not to exceed three hundred dollars (\$300).

(5) For the purposes of this section, the following definitions shall apply:

(a) "Reasonable suspicion" means an act of judgment by a school employee or independent contractor of an educational institution which leads to a reasonable and prudent belief that a student is in violation of school board or charter school governing board policy regarding alcohol or controlled substance use, or the "use" or "under the influence" provisions of [section 37-2732C, Idaho Code](#). Said judgment shall be based on training in recognizing the signs and symptoms of alcohol and controlled substance use.

(b) "Intentionally harass" means a knowing and willful course of conduct directed at a specific student which seriously alarms, annoys, threatens or intimidates the student and which serves no legitimate purpose. The

course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress.

(c) “Course of conduct” means a pattern or series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally and statutorily protected activity is not included within the meaning of “course of conduct.”

### **History.**

I.C., § 33-210, as added by 1996, ch. 379, § 1, p. 1284; am. 1998, ch. 206, § 1, p. 731; am. 2002, ch. 353, § 1, p. 1007; am. 2006, ch. 244, § 2, p. 740.

## **STATUTORY NOTES**

### **Amendments.**

The 2006 amendment, by ch. 240, updated the citation at the end of subsection (3).

**33-211. Students' driver's licenses.** — The board of trustees of a school district and all employees of the school district are authorized to and shall administer the school district's portion of section 49-303A, Idaho Code, relating to driver's licenses and school attendance.

**History.**

I.C., § 33-211, as added by 1996, ch. 348, § 6, p. 1159.

**STATUTORY NOTES**

**Effective Dates.**

Section 6 of S.L. 1996, ch. 348, became law without the governor's signature, July 1, 1996.

**33-212. Educational opportunity for military children. [Repealed.]**

Repealed by S.L. 2013, ch. 301, § 1, effective July 1, 2013. For comparable provisions, see § 33-5701.

**History.**

I.C., § 33-212, as added by 2010, ch. 54, § 1, p. 103.





## **CHAPTER 3**

### **SCHOOL DISTRICTS**

#### **Section.**

- 33-301. School districts bodies corporate.
- 33-302. Classification of school districts.
- 33-303. Reclassification of school districts.
- 33-304. Joint school districts.
- 33-305. Naming and numbering school districts.
- 33-306. Boundaries of school districts.
- 33-307. Correcting or altering school district boundaries.
- 33-308. Excision and annexation of territory.
- 33-309. Lapsed districts — Annexation.
- 33-310. Consolidation of school districts.
- 33-310A. Consolidation of contiguous school districts.
- 33-310B. Feasibility study and plan for consolidation.
- 33-311. Plan of consolidation submitted to electors.
- 33-312. Division of school district.
- 33-313. Trustee zones.
- 33-314. Appeal from order of state board of education.
- 33-315. Cooperative educational services — Legislative intent declared.
- 33-316. Cooperative contract to employ specialized personnel and/or purchase materials.
- 33-317. Cooperative service agency — Powers — Duties — Limitations.
- 33-317A. Legislative intent — Cooperative service agency — School plant facility levy.
- 33-318. Fair share of expenses — Appropriation from school district funds.

33-319. Rural school districts — Rural public charter schools.

33-320. Continuous improvement plans and training.

33-321 — 33-350. [Reserved.]

33-351. Subdistricts — Authority to establish — Election.

33-352. Establishment.

33-353. Nature and powers.

33-354. Indebtedness — Bond issues.

33-355. Levy for plant facilities reserve fund — Election.

33-356. School building design and energy efficiency.

33-357. Creation of internet based expenditure website.

**33-301. School districts bodies corporate.** — Each school district, now or hereafter established, when validly organized and existing, is declared to be a body corporate and politic, and in its corporate capacity may sue and be sued and may acquire, hold and convey real and personal property necessary to its establishment, extension and existence. It shall have authority to issue negotiable coupon bonds and incur such other debt, in the amounts and manner, as provided by law.

**History.**

1963, ch. 13, § 31, p. 27.

**STATUTORY NOTES**

**Cross References.**

County commissioners to divide counties into school districts, § 31-803.

Junior college districts, cooperation with, § 33-2115.

School bonds, § 33-1101 et seq.

Supervision and control by state board of education, § 33-116.

**JUDICIAL DECISIONS**

**Cited in:** Idaho Schs. for Equal Educ. Opportunity v. State, 140 Idaho 586, 97 P.3d 453 (2004).

Decisions Under Prior Law

Analysis

Agency of state.

Collateral attack.

Constitutionality of act organizing district.

Continuity of district.

District not municipal corporation.

District within two cities.

Implied powers.

Presumptions.

Suits by and against.

### **Agency of State.**

School district was agency of state, created by law solely for operation of school system for public benefit and derived all of its powers from the former statute, being limited to such as were deemed necessary for that purpose. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

### **Collateral Attack.**

Where it was apparent that school district was at least corporation de facto, regularity of its organization could not be questioned in collateral proceeding, nor in any proceeding after period of six months from date of entry of order establishing such district. *Morgan v. Independent School Dist. No. 26-J*, 36 Idaho 372, 211 P. 529 (1922).

### **Constitutionality of Act Organizing District.**

Supreme court would not determine constitutionality of an act under which district was organized in a proceeding which sought to have district declared void and a bond issue enjoined where, subsequent to denial of relief, the bond issue was defeated and the district reorganized. *Terhaar v. Joint Class A School Dist. No. 241*, 77 Idaho 112, 289 P.2d 623 (1955).

### **Continuity of District.**

The board was a continuous body or entity; the corporation continued unchanged and had the power to contract; its contracts were contracts of the board and not of its individual members. *Corum v. Common Sch. Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

### **District Not Municipal Corporation.**

School district was not municipal corporation. *Fenton v. Board of Comm'rs*, 20 Idaho 392, 119 P. 41 (1911); *Barton v. Alexander*, 27 Idaho 286, 148 P. 471 (1915).

### **District Within Two Cities.**

Where district lies within two cities, purpose of former statute was satisfied by permitting necessary organization proceedings to be had within district and under supervision of board of commissioners of either county. *Morgan v. Independent School Dist. No. 26-J*, 36 Idaho 372, 211 P. 529 (1922).

### **Implied Powers.**

The only implied powers which could be conceded to school district were such as were reasonably necessary to enable it to exercise powers expressly granted. *Olmstead v. Carter*, 34 Idaho 276, 200 P. 134 (1921).

### **Presumptions.**

Legal organization of rural high school would be presumed after two years. *Pickett v. Board of County Comm'rs*, 24 Idaho 200, 133 P. 112 (1913).

### **Suits By and Against.**

An unqualified grant of power "to sue and be sued" carried with it all powers that were ordinarily incident to the prosecution and defense of a suit at law or in equity. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

One district could maintain an action against another, where, by either mistake, fraud, or inefficiency of public servants, the one district had received and expended for educational purposes, in its territory, more than its share of the public fund; and the other district by reason thereof had received less than its share. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

Each school district, whether common or independent, was made a body corporate and was given the power to sue and be sued. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

School districts had the authority to maintain a suit against the state challenging the constitutionality of the state's system of funding public schools, where the school districts alleged they were being deprived of funds they were entitled to under Idaho Const., Art. IX, § 1. *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993).

## RESEARCH REFERENCES

**A.L.R.** — Modern status of doctrine or sovereign immunity as applied to public schools and institutions of higher learning. 33 A.L.R.3d 703.

Tort liability of public schools. 33 A.L.R.3d 703; 34 A.L.R.3d 1166; 23 A.L.R.5th 1; 35 A.L.R.3d 725; 35 A.L.R.3d 758; 36 A.L.R.3d 361; 37 A.L.R.3d 712; 37 A.L.R.3d 738; 38 A.L.R.3d 830.

**33-302. Classification of school districts.** — Elementary school districts shall give instruction only to pupils in grades one (1) through eight (8), and may give instruction in kindergarten. All other school districts shall give instruction to pupils in grades one (1) through twelve (12), and may give instruction in kindergarten, and shall maintain secondary schools giving instruction to pupils in grades seven (7) through twelve (12), or any combination of such grades.

Any school district maintaining its only secondary school building situate not less than twenty-five (25) miles from the nearest Idaho secondary school, and which employs not less than six (6) teachers within its district, may be authorized by the state board of education to instruct pupils in two (2) or more grades above grade seven (7).

Whenever any district lies, or shall lie, in more than one (1) county it shall be designated as a joint district of its class.

**History.**

1963, ch. 13, § 32, p. 27; am. 1975, ch. 42, § 4, p. 73.

**STATUTORY NOTES**

**Cross References.**

Accreditation of secondary schools by state board, § 33-119.

**JUDICIAL DECISIONS**

**Cited in:** *Peterson v. Minidoka County Sch. Dist. No. 331*, 118 F.3d 1351 (9th Cir. 1997).



**33-303. Reclassification of school districts.** — a. Whenever the board of trustees of an elementary school district shall propose to submit to the qualified electors of the district the question of issuance of bonds for the purpose of acquiring or building any secondary school building, or whenever the board of trustees of an elementary school district shall propose to otherwise establish, or to re-establish, a secondary school, said board of trustees shall first petition the state board of education to reclassify the district. Any such petition shall be in writing and shall contain such information as will enable the state board of education to determine the feasibility of maintaining an accredited secondary school by the petitioning district.

If the state board of education shall determine that the maintenance of an accredited secondary school by the petitioning elementary school district is feasible, it shall reclassify such district but such reclassification shall be for a period of not more than three (3) years, at the end of which period the state board of education shall review its action. If, at the time of review, the district is maintaining an accredited secondary school, its reclassification shall be made permanent, subject only to the provisions of subsection (b) of this section. If, at the time of review, the district is not maintaining an accredited secondary school, the state board of education shall revoke the temporary reclassification and the district shall revert to the classification of an elementary school district.

b. If any school district, other than an elementary school district, shall have maintained no secondary school within its area for a period of five (5) successive years, the state board of education may, at any time thereafter and while such district continues to maintain no secondary school, reclassify such district as an elementary school district.

c. Whenever the state board of education shall reclassify any district, as in this section provided, written notice thereof shall be given to the board of trustees of such district and to the board of county commissioners of any county in which the district may lie.

**History.**

1963, ch. 13, § 33, p. 27.

## **STATUTORY NOTES**

### **Cross References.**

Support program, effect upon, § 33-1008.

Notice by mail, § 60-109A.

**33-304. Joint school districts.** — In any joint district, the duties imposed upon, and the records required to be kept by, the county commissioners or any other county officer, in respect to school districts, including the assessment of taxable property and the levying of and collection of taxes, shall be performed or kept by the commissioners and other county officers in each county in which the district lies as though the portion of the district in each county were a separate district therein.

One (1) of the counties in which a joint district lies shall be the home county of the district.

When a joint district is created by the division of a county, or through the annexation of any territory by the state board of education, the board of trustees of such district shall designate its home county and give notice thereof to the state board of education and to the board of county commissioners in each county in which the district lies.

#### **History.**

1963, ch. 13, § 34, p. 27.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law Analysis**

[In general.](#)

[Joint control of property.](#)

#### **In General.**

County commissioners of county in which a portion of joint school district is located might segregate such portion and form same into a common school district. [Bobbitt v. Blake, 25 Idaho 53, 136 P. 211 \(1913\).](#)

Former law providing for formation of joint independent and rural high school districts was designed to admit of creation of joint independent school district, but such end was not to be accomplished by separate organization in each county, but same course must be pursued as in

organization of districts lying wholly within one county. *Morgan v. Independent School Dist. No. 26-J*, 36 Idaho 372, 211 P. 529 (1922).

### **Joint Control of Property.**

Provisions of the former statute were inconsistent with idea of joint control of school property by separate districts. *Olmstead v. Carter*, 34 Idaho 276, 200 P. 134 (1921).

**33-305. Naming and numbering school districts.** — Each school district as the same is organized on the effective date of this act shall bear the same number as theretofore. Excepting specially chartered school districts, each school district operating a secondary school, or secondary schools, on said date shall be designated by number and county, after the following style:

School District No. ....., ..... County, State of Idaho, or Joint School District No. ....., ....., ....., (and ..... ) Counties, State of Idaho.

Each school district which, on the effective date of this act, is maintaining only an elementary school, or elementary schools, shall be designated after the following style:

Elementary School District No....., ..... County, State of Idaho, or Joint Elementary School District No. ....., ....., ....., (and ..... ) Counties, State of Idaho.

Joint districts shall be designated by the same number in each county in which the district lies, or shall lie.

Wherever the term “school district” appears in this act, it shall mean and include any school district, joint school district, elementary school district, joint elementary school district or specially chartered school district, unless a more limited meaning is clearly expressed and intended, or unless any provision of a charter is contrary thereto.

### **History.**

1963, ch. 13, § 35, p. 27.

## **STATUTORY NOTES**

### **Compiler’s Notes.**

The phrase “the effective date of this act,” referred to in the first and second paragraphs, means the effective date of S.L. 1963, Chapter 13, which was July 21, 1963.

The term “this act”, as used in the last paragraph, refers to S.L. 1963, Chapter 13, which is codified throughout Title 33.

**33-306. Boundaries of school districts.** — There shall be no part of the area of the state of Idaho not included in the area of some school district.

A legal description of the boundaries of each school district, as now or hereafter established, shall be kept by the state board of education and by the board of county commissioners in each county in which any school district, or any part thereof, shall lie.

**History.**

1963, ch. 13, § 36, p. 27.

**33-307. Correcting or altering school district boundaries.** — (1) Whenever the state board of education shall find that school district boundaries should be corrected or altered, because of error in the legal description of the boundaries of any school district, or for any other reason, including, but not limited to:

(a) Any part of the area of the state is not included within the area of a school district; or (b) Is included in more than one (1) school district; or (c) The approval in any school election involving the excision and annexation of territory, or the consolidation of school districts, the division of a school district, or the lapse of a school district; then the superintendent of public instruction shall make an appropriate order including an omitted area into any school district, or districts, or correcting or altering the boundaries of the districts, in such manner as, in his judgment, is just and proper.

(2) A copy of any such order shall be sent by the state department of education to the board of trustees of any school district affected by the order, which shall notify the state tax commission and the county assessor and county recorder in accordance with the provisions of [section 63-215, Idaho Code](#).

(3) Within thirty (30) days of receipt of the order, the state tax commission and the county assessor shall correct or alter the legal description of the school district or districts, as the same may appear in their respective records. The state tax commission shall notify the board of trustees of the affected school district and the state department of education that the county records have been corrected as ordered effective upon such notification. In the case of either the consolidation or division of a school district, the proposal shall become effective the first day of July next following the date of the order.

(4) The state board of education may promulgate rules to govern the procedures for correcting or altering school district boundaries.

**History.**



1963, ch. 13, § 37, p. 27; am. 1973, ch. 9, § 1, p. 21; am. 1980, ch. 38, § 1, p. 65; am. 1998, ch. 244, § 1, p. 803; am. 2009, ch. 107, § 1, p. 339.

## **STATUTORY NOTES**

### **Cross References.**

Foundation program, effect upon, § 33-1003.

State tax commission, § 63-101.

### **Amendments.**

The 2009 amendment, by ch. 107, rewrote the section, revising provisions relating to the correction or alteration of school district boundaries and authorizing the state board of education to promulgate certain rules.

### **Effective Dates.**

Section 3 of S.L. 1998, ch. 244 declared an emergency. Approved March 20, 1998.

**33-308. Excision and annexation of territory.** — (1) A board of trustees of any school district, including a specially chartered school district, or one-fourth ( $\frac{1}{4}$ ) or more of the school district electors residing in an area of not more than fifty (50) square miles within which there is no schoolhouse or facility necessary for the operation of a school district, may petition in writing proposing the annexation of the area to another and contiguous school district.

(2) Such petition shall be in duplicate, one (1) copy of which shall be presented to the board of trustees of the district from which the area is proposed to be excised, and the other to the board of trustees of the district to which the area is proposed to be annexed. The petition shall contain:

- (a) The names and addresses of the petitioners;
- (b) A legal description of the area proposed to be excised from one district and annexed to another contiguous district. Such legal description shall be prepared by a licensed attorney, licensed professional land surveyor, or licensed professional engineer professionally trained and experienced in legal descriptions of real property;
- (c) Maps showing the boundaries of the districts as they presently appear and as they would appear should the excision and annexation be approved;
- (d) The names of the school districts from and to which the area is proposed to be excised and annexed;
- (e) A description of reasons for which the petition is being submitted; and
- (f) An estimate of the number of children residing in the area described in the petition.

(3) The board of trustees of each school district, no later than thirty (30) calendar days after its first regular meeting held subsequent to receipt of the petition, shall transmit the petition, with recommendations, to the state board of education.

(4) The state board of education shall approve the proposal, provided:

(a) The excision and annexation is in the best interests of the children residing in the area described in the petition; and

(b) The excision of the territory, as proposed, would not leave a school district with a bonded debt in excess of the limit then prescribed by law.

If either condition is not met, the state board shall disapprove the proposal. The approval or disapproval shall be expressed in writing to the board of trustees of each school district named in the petition.

(5) If the state board of education approves the proposal, it shall be submitted to the school district electors residing in the district from which the area is proposed to be excised and in the district to which the area is proposed to be annexed, at an election held in the manner provided in chapter 14, title 34, Idaho Code. Such election shall be held on the date authorized in [section 34-106, Idaho Code](#), that is nearest to sixty (60) days after the state board approves the proposal.

(6) At the election, there shall be submitted to the electors having the qualifications of electors in a school district bond election:

(a) The question of whether the area described in the petition shall be excised from school district no. ( ) and annexed to contiguous school district no. ( ); and

(b) The question of assumption of the appropriate proportion of any bonded debt, and the interest thereon, of the proposed annexing school district.

(7) In order for a proposal to excise and annex an area to be approved:

(a) The proposal must be approved by a majority of electors voting in the election in both:

(i) The district from which the area is proposed to be excised; and

(ii) The district to which the area is proposed to be annexed; and

(b) The electors voting on the question of the assumption of bonded debt and interest have approved such assumption by the proportion of votes cast as is required by [section 3, article VIII, of the constitution](#) of the state of Idaho.

(8) If the proposal is approved by the electors in the manner prescribed, the board of canvassers shall promptly notify the state department of education and the affected school districts of such results. The superintendent of public instruction shall make an appropriate order for the boundaries of the affected school districts to be altered, and the legal descriptions of the school districts shall be altered as prescribed in [section 33-307, Idaho Code](#).

### **History.**

1963, ch. 13, § 38, p. 27; am. 1998, ch. 244, § 2, p. 803; am. 2009, ch. 107, § 2, p. 339; am. 2009, ch. 341, § 24, p. 993; am. 2010, ch. 215, § 1, p. 482; am. 2020, ch. 288, § 1, p. 833.

## **STATUTORY NOTES**

### **Cross References.**

Consolidation of contiguous districts, § 33-310A.

Foundation program, effect upon, § 33-1003.

School elections, § 33-401 et seq.

### **Amendments.**

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 107, in subsection (3), substituted “department” for “board”; and rewrote subsection (8), which formerly read: “If the proposal shall be approved by the electors in the manner prescribed, the state board of education shall make an appropriate order for the boundaries of the affected school districts to be altered; and the legal descriptions of the school districts shall be corrected as prescribed in [section 33-307\(2\), Idaho Code](#).”

The 2009 amendment, by ch. 341, in subsection (5), updated the chapter and title reference in the first sentence and, in the second sentence, substituted “shall be held on the date authorized in [section 34-106, Idaho Code](#), which is nearest to sixty (60) days after” for “shall be held within sixty (60) days after.”

The 2010 amendment, by ch. 215, added the last sentence in paragraph (2)(b).

The 2020 amendment, by ch. 288, in subsection (3), substituted “thirty (30) calendar days” for “ten (10) calendar days” near the beginning and substituted “board of education” for “department of education” at the end; rewrote subsection (5), which formerly read: “If the state board of education shall approve the proposal, it shall be submitted to the school district electors residing in the area described in the petition, at an election held in the manner provided in chapter 14, title 34, Idaho Code. Such election shall be held on the date authorized in [section 34-106, Idaho Code](#), which is nearest to sixty (60) days after the state board approves the proposal”; deleted “and residing in the area proposed to be annexed” at the end of the introductory paragraph in subsection (6); rewrote subsection (7), which formerly read: “If a majority of the school district electors in the area described in the petition, voting in the election, shall vote in favor of the proposal to excise and annex the said area, and if in the area the electors voting on the question of the assumption of bonded debt and interest have approved such assumption by the proportion of votes cast as is required by [section 3, article VIII, of the constitution](#) of the state of Idaho, the proposal shall carry and be approved. Otherwise, it shall fail”; and, in the first sentence of subsection (8), substituted “is approved” for “shall be approved” near the beginning and deleted “thereupon” preceding “promptly notify” near the end.

### **Effective Dates.**

Section 3 of S.L. 1998, ch. 244 declared an emergency. Approved March 20, 1998.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 2 of S.L. 2010, ch. 215 provided that the act should take effect on and after January 1, 2011.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law**

#### **Analysis**

Division of school districts.

Notice to residents.

### **Division of School Districts.**

County commissioners had no authority under the former law providing for the counting and certification of election returns to change boundaries of, or divide, independent school districts. *Wood v. Independent School Dist. No. 2*, 21 Idaho 734, 124 P. 780 (1912).

Under the former law providing for the segregation of component districts, petition and facts upon which it was presented should have been heard by board of commissioners and by them passed upon. *Gaiser v. Steele*, 25 Idaho 412, 137 P. 889 (1914).

Where board of county commissioners had consolidated two school districts, a succeeding board could divide same; where district had been organized by order of county commissioners, future board had authority to change boundaries or divide same. *Clay v. Board of County Comm'rs*, 30 Idaho 794, 168 P. 667 (1917).

Petition for creation of school district by division of district had to be signed by two-thirds of those who were heads of families and residents in the district. *Wheeler v. Board of County Comm'rs*, 31 Idaho 766, 176 P. 566 (1918).

Provisions of the former law providing for the segregation of component districts did not prohibit appeal from order of board of county commissioners for the segregation of school district from rural high school district. *Rural High School Dist. No. 1 v. School Dist. No. 37*, 32 Idaho 325, 182 P. 859 (1919).

Petition filed with board of county commissioners for segregation of school district from rural high school district did not have to be drawn with formal accuracy required of pleading in judicial proceeding. *In re Segregation of School Dist. No. 58*, 34 Idaho 222, 200 P. 138 (1921).

Board of county commissioners could segregate regularly organized common school district from rural high school district, although rural high school district was composed of only two common school districts. *Olmstead v. Carter*, 34 Idaho 276, 200 P. 134 (1921).

In order to confer jurisdiction upon board of commissioners, it was necessary that petition and map be filed as provided by the former statute. *Smith v. Canyon County*, 39 Idaho 222, 226 P. 1070 (1924).

### **Notice to Residents.**

The residents of the previously existing school districts in voting their approval of a plan for reorganization were charged with knowledge of the discretionary power vested in the school trustees by the statutes to make such changes in the operation of the district and the place of attendance of the children of its various areas as changing conditions might warrant or require. *Hay v. Class B School Dist. No. 42*, 84 Idaho 501, 373 P.2d 922 (1962).

**33-309. Lapsed districts — Annexation.** — (1) If the state board of education shall find any school district:

- (a) Has not operated its school for a period of one (1) school year;
- (b) In which the average daily attendance during each term of not less than seven (7) months in the two (2) school years last past has been less than five (5) pupils; or
- (c) For a period of not less than one (1) year last past has had an insufficient number of members on its board of trustees lawfully to conduct the business of the district;

the state board may enter its order declaring any such district to be lapsed, and which district shall lapse as of the first day of July next following the date of said order.

(2) Upon entering its order declaring a school district lapsed pursuant to subsection (1) of this section, the state board shall designate some proper person a hearing officer to conduct a public hearing or hearings on the matter of annexing the lapsed district to a school district or districts contiguous thereto. The state board shall cause notice of such hearing or hearings to be published in a newspaper of general circulation in the area and the notice shall state the time and place of the hearing or hearings and the subject matter involved.

(3) Upon concluding any hearing or hearings the hearing officer shall make his report and recommendation to the state board, and the state board shall thereafter order the lapsed area annexed to such contiguous district or districts as in the judgment of the state board seems equitable and just. Any such annexation shall be effective as of the fifteenth day of August next following the date of the order of annexation.

(4) Whenever there is any outstanding unpaid bonded debt owed by the lapsed district, the state board shall, in its order of annexation, require the district, or one (1) of the districts, to which the lapsed area is annexed, to keep and maintain the bond register and to pay the principal and interest, when the same are due, out of the proceeds of any levy made for that purpose. The said order of annexation shall also provide for the transfer, or



apportionment, to the annexing district or districts of the property and current liabilities of the lapsed district as in the judgment of the state board is equitable and just; provided however, that if the lapsed district shall have excess of liquid assets over current liabilities, and if such lapsed district shall have any outstanding unpaid bonded debt, then and in that event such excess shall be ordered transferred to a fund for the payment of the principal of and interest on such debt.

(5) When annexation has been completed, as hereinabove authorized, the state board shall give notice of such annexation to the officers of the lapsed district, if any there be, and to the board of county commissioners of any county in which shall lie any district, the boundaries of which have been changed by the annexation of the lapsed area. The notice to any board of county commissioners shall be accompanied by a legal description of the boundaries of the district or districts as changed by the annexation.

**History.**

1963, ch. 13, § 39, p. 27; am. 2009, ch. 88, § 1, p. 257.

**STATUTORY NOTES**

**Cross References.**

Foundation program, effect upon, § 33-1003.

**Amendments.**

The 2009 amendment, by ch. 88, added the numerical subsection designations; in subsection (1)(c), substituted “the state board may enter its order” for “the said state board of education shall enter its order”; in subsection (2), added “Upon entering its order declaring a school district lapsed pursuant to subsection (1) of this section”; and in subsections (2) through (5), deleted “of education” following “state board.”

**33-310. Consolidation of school districts.** — The boards of trustees of two (2) or more contiguous school districts may submit to the state board of education a plan for the consolidation of their districts into a single new district.

The plan shall contain as a minimum the following, and in addition any other information required by the state board of education: (1) A map or maps showing the boundaries of the proposed new district, the boundaries of the component consolidating districts, the location of existing schoolhouses or other facilities of the component districts, the proposed trustee zones, and the proposed transportation routes if any; (2) A legal description of the boundaries of the proposed new school district and of the trustee zones proposed, with estimates of the population in each such zone; (3) The assessed value of taxable property of each component consolidating district and of the entire proposed new district; (4) Outstanding general obligation bonds of any component consolidating district, sinking funds accumulated, and estimated proceeds of sinking fund levies in process of collection; (5) Whether any component district has established a plant facilities reserve fund, and if so the amount on hand in such fund, the obligations against the fund, and the levy being made for such fund together with estimate of the proceeds of such levy in process of collection; (6) The amount of any outstanding and unpaid bonds that will become the obligation of the subdistricts, pursuant to [section 33-311, Idaho Code](#), after the application of any plant facility reserve funds, pursuant to [section 33-901, Idaho Code](#). The plan shall also show for each subdistrict the estimated amount of state subsidies to be received, the estimated bond levy rate and the year in which the last levy will be made; (7) If a joint district, the designation of the home county; (8) The official name and number of the proposed new district; and (9) How the property, real and personal, of former districts shall vest in the new district.

Before submitting any proposal for consolidating school districts to the state board of education, the board of trustees of each proposing district shall first call and cause to be held, within said district, a hearing on the proposal. Notice of the time and place of such hearing shall be given, by each such district, by two (2) publications in a newspaper of general

circulation in the district, the first and last publications being not less than six (6) days apart.

At such hearings, any school district elector or taxpayer of the district may appear and be heard, and may request any information from the board of trustees, concerning the proposed consolidation. Records of the hearings shall be entered in the minutes of each board of trustees and shall be included with the plan of proposed consolidation if and when it is submitted to the state board of education.

Following any hearing, it shall be within the discretion of the board of trustees of any proposing district whether it shall further proceed in the plan for consolidating the districts.

### **History.**

1963, ch. 13, § 40, p. 27; am. 2007, ch. 79, § 1, p. 209.

## **STATUTORY NOTES**

### **Cross References.**

Foundation programs, effect upon, § 33-1003.

### **Amendments.**

The 2007 amendment, by ch. 79, rewrote subsection (6), which formerly read: “Whether any outstanding and unpaid bonds of any district included in the proposal are to be and become the obligations of the proposed consolidated district, or shall remain the obligations of the area of the district which first incurred the same. If such bonds are proposed to become the obligations of the proposed consolidated district, the plan shall show each participating district’s portion thereof which shall be that portion of the aggregate debt as the assessed value of taxable property in each district bears to the aggregate assessed value of taxable property in the area of the proposed consolidated district.”

### **Effective Dates.**

Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

## **JUDICIAL DECISIONS**

## Decisions Under Prior Law

### Analysis

Effect of consolidation.

In general.

Jurisdiction.

Manner of reorganization.

Rural high school districts.

#### **Effect of Consolidation.**

District formed by union of existing districts did not occupy different position after consolidation from district created from unorganized territory. *Clay v. Board of County Comm'rs*, 30 Idaho 794, 168 P. 667 (1917).

#### **In General.**

Former law providing that the county superintendent give notice of a filing of a petition to alter a school district boundary did not require recommendation of county superintendent to be in writing. *Clay v. Board of County Comm'rs*, 30 Idaho 794, 168 P. 667 (1917).

#### **Jurisdiction.**

Filing of petition conferred jurisdiction on board of commissioners and erroneous action thereon did not disturb such jurisdiction. *Sizemore v. Board of County Comm'rs*, 36 Idaho 184, 210 P. 137 (1922).

In order to confer jurisdiction upon the board of commissioners, it was necessary that notice be given in accordance with the former statute. *Smith v. Canyon County*, 39 Idaho 222, 226 P. 1070 (1924).

#### **Manner of Reorganization.**

A plan for reorganization of a school district could not be approved where it was gerrymandered in a prejudicial manner or merely for the purpose of including the places of residence of persons desiring to be included and of excluding those of persons desiring to be left out. *In re Gooding County Comm'rs*, 77 Idaho 505, 295 P.2d 695 (1956).

#### **Rural High School Districts.**

There were two jurisdictional requisites for the creation of rural high school districts; first, filing with board of county commissioners the requisite petition, and second, submission of the question to a vote of electors. If majority of votes cast at such election were in favor of creating district, district was thereby created. *Pickett v. Board of County Comm'rs*, 24 Idaho 200, 133 P. 112 (1913).

**33-310A. Consolidation of contiguous school districts.** — In addition to the procedure contained in section 33-310, Idaho Code:

A. five per cent (5%) or more of the registered voters from each of two (2) or more contiguous school districts, when such districts coincide with election precincts, or, B. a number of registered voters equal to fifteen per cent (15%) or more of the aggregate number of votes cast at the last three (3) elections for school trustees in each of the school districts, may petition in writing proposing the consolidation of their districts into a single new district. One (1) copy of such petition shall be presented to the board of trustees of each district included in the proposed consolidation. The petition shall contain: 1. The names and addresses of the petitioners; 2. A map or maps showing the boundaries of the proposed new district, the boundaries of the component consolidating districts, the location of existing schoolhouses or other facilities of the component districts, the proposed trustee zones, and the proposed transportation routes, if any.

When the petitions are received by the boards of trustees, the provisions of [section 33-310, Idaho Code](#), shall become mandatory upon the boards so affected. The petitioners shall have the right to cooperate in the formulation of the proposed consolidated school district with the board of trustees of each school district affected thereby. The provisions of [section 33-310, Idaho Code](#), shall be complied with and the proposed consolidation together with the testimony given at the public hearings shall be submitted to the state board of education within three (3) months after the first meeting of the combined boards and the petitioners. The first meeting of the combined boards and the petitioners shall be within fifteen (15) days after the petitions are submitted by the petitioners.

### **History.**

[I.C., § 33-310A](#), as added by 1970, ch. 86, § 1, p. 210.

## **STATUTORY NOTES**

### **Cross References.**

Excision and annexation of territory, § 33-308.

School elections, § 33-401 et seq.

**33-310B. Feasibility study and plan for consolidation.** — All school districts operating one (1) or more high schools may conduct a feasibility study and prepare a plan for school consolidation, which may also include school district consolidation. The cost of such feasibility studies and plans shall be reimbursed at an amount not to exceed ten thousand dollars (\$10,000) per each school district that proposes to consolidate, in accordance with rules promulgated by the state board of education. The state board of education shall review and act upon all plans for school consolidation.

**History.**

**I.C., § 33-310B**, as added by 1989, ch. 296, § 1, p. 724; am. 1998, ch. 88, § 3, p. 298; am. 2007, ch. 79, § 2, p. 209.

**STATUTORY NOTES**

**Amendments.**

The 2007 amendment, by ch. 79, in the second sentence, inserted “and plans,” and substituted “per each school district that proposes to consolidate” for “per study.”

**Effective Dates.**

Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.



**33-311. Plan of consolidation submitted to electors.** — The state board of education may approve or disapprove any plan proposing consolidation, and if it approves the same the department of education shall give notice thereof to the board of trustees of each school district proposing to consolidate and to the board of county commissioners in each county in which the proposed consolidated district would lie. Notice to the board of county commissioners shall include the legal description of the boundaries of the proposed consolidated district and a brief statement of the approved proposal, and shall be accompanied by a map of the proposed consolidated district.

Not more than ten (10) days after receiving the notice from the state department of education, each board of county commissioners receiving such notice shall enter the order calling for an election on the question of approving or disapproving, and shall cause notice of such election to be published. The notice shall be published, the election shall be held and conducted and its results canvassed, in the manner and form of title 34, Idaho Code.

If the qualified school electors of any one (1) district proposing to consolidate, and voting in the election, shall constitute a majority of all such electors voting in the entire area of the proposed consolidated district, the proposed consolidation shall not be approved unless a majority of such electors in such district, voting in the election, and a majority of such electors in each of the remaining districts, voting in the election, shall approve the proposed consolidation.

If the qualified school electors in no one (1) of the districts proposing to consolidate, and voting in the election, constitute a majority of all such electors voting in the entire area of the proposed consolidated district, the proposed consolidation shall not be approved unless a majority of all such electors in each district, voting in the election, shall approve the proposed consolidation.

In any plan of consolidation the existing bonded debt of any district or districts proposing to consolidate, shall not become the obligation of the proposed consolidated school district. The debt or debts shall remain an

obligation of the property within the districts proposing the consolidation. Upon voter approval of the proposed consolidation, the districts proposing to consolidate shall become subdistricts of the new district as if they had been created under the provisions of [section 33-351, Idaho Code](#). The subdistricts shall be called bond redemption subdistricts. The powers and duties of such bond redemption subdistricts shall not include authority to incur new indebtedness within the subdistricts.

When a consolidation is approved, as hereinabove prescribed, a new school district is thereby created. The board of canvassers shall thereupon promptly notify the state department of education and the affected school districts of such result. The superintendent of public instruction shall make an appropriate order showing the creation of the district, a legal description of its boundaries, and the legal descriptions of the boundaries of the affected school districts as prescribed in [section 33-308, Idaho Code](#).

### **History.**

1963, ch. 13, § 41, p. 27; am. 1985, ch. 237, § 1, p. 562; am. 1989, ch. 296, § 2, p. 724; am. 2009, ch. 107, § 3, p. 339; am. 2009, ch. 341, § 25, p. 993.

## **STATUTORY NOTES**

### **Cross References.**

School elections, § 33-401 et seq.

### **Amendments.**

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 107, in the first sentence in the first paragraph, substituted “the department of education” for the second occurrence of “it”; in the first sentence in the second paragraph, substituted “department” for “board”; and rewrote the last paragraph, which formerly read: “When a consolidation is approved, as hereinabove prescribed, a new school district is thereby created, and the board of county commissioners of any county in which the consolidated district lies shall enter its order

showing the creation of the district and a legal description of its boundaries.”

The 2009 amendment, by ch. 341, in the second paragraph, twice deleted “posted and” preceding “published” and substituted “of title 34, Idaho Code” for “of [sections 33-401 through 33-406, Idaho Code.](#)”

### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law**

#### **Analysis**

[Apportionment of indebtedness.](#)

[Organization of independent school.](#)

[Propositions voted on.](#)

[Territory affected.](#)

### **[Apportionment of Indebtedness.](#)**

Apportionment by county superintendent of indebtedness as between newly-created and old districts was not prerequisite to validity of organization of new district. [School Dist. No. 15 v. Blaine County, 26 Idaho 285, 142 P. 41 \(1914\).](#)

### **[Organization of Independent School.](#)**

Upon organization of independent school district embracing territory formerly occupied by common school district, former was bound to assume and discharge all debts, obligations, and duties belonging to or devolving on old district. [Boise City Nat’l Bank v. Independent Sch. Dist. No. 40, 33 Idaho 26, 189 P. 47 \(1920\).](#)

### **[Propositions Voted On.](#)**

The voters of the entire district were entitled to vote on any proposition or plan proposing to take away portions of the district for consolidation

with another district. *In re Gooding County Comm'rs*, 77 Idaho 505, 295 P.2d 695 (1956).

### **Territory Affected.**

The words “territory affected” meant the whole of the district from which a part was sought to be taken. *In re Gooding County Comm'rs*, 77 Idaho 505, 295 P.2d 695 (1956).

**33-312. Division of school district.** — A school district may be divided so as to form not more than two (2) districts each of which must have contiguous boundaries, in the manner hereinafter provided, except that any district which operates and maintains a secondary school or schools shall not be divided unless the two (2) districts created out of the division shall each operate and maintain a secondary school or schools immediately following such division.

A proposal to divide a school district may be initiated by its board of trustees and submitted to the state department of education. Such proposal shall contain all of the information required in a proposal to consolidate school districts as may be relevant to a proposal to divide a school district. It shall also show the manner in which it is proposed to divide or apportion the property and liabilities of the district, the names and numbers of the proposed new districts, and legal description of the proposed trustee zones.

Before submitting any proposal to divide a school district, the board of trustees shall hold a hearing or hearings on the proposal within the district. Notice of such hearing or hearings shall be posted by the clerk of the board of trustees in not less than three (3) public places within the district, one (1) of which places shall be at or near the main door of the administrative offices of the school district, for not less than ten (10) days before the date of such hearing or hearings.

The department of education shall present any such proposal to the state board of education, which may approve or disapprove the proposal, and the department of education shall give notice thereof in the manner of a proposal to consolidate school districts; except, that the state board of education shall not approve any proposal which would result in a district to be created by the division having or assuming a bonded debt in an amount exceeding the limitations imposed by law, or which would leave the area of any city in more than one (1) school district.

If the state board of education shall approve the proposal to divide the district, notice of the election shall be published and the election shall be held subject to the provisions of [section 34-106, Idaho Code](#). The election shall be conducted, and the ballots shall be canvassed, according to the

provisions of title 34, Idaho Code. The division shall be approved only if a majority of all votes cast at said special election by the school district electors residing within the entire existing school district and voting in the election are in favor of the division of such district, and a majority of all votes cast at said special election by the qualified voters within that portion of the proposed new district having a minority of the number of qualified voters, such portion to be determined by the number of votes cast in each area which is a contemplated new district, are in favor of the division of the district, and upon such approval two (2) new school districts shall be thereby created. The organization and division of all school districts which have divided since June 30, 1963, are hereby validated.

If the division is approved, as herein provided, two (2) new school districts are thereby created. The board of canvassers shall thereupon promptly notify the state department of education and the affected school districts of such result. The superintendent of public instruction shall make an appropriate order showing the creation of the districts and a legal description of the boundaries, and the legal descriptions of the affected school districts shall be altered, as prescribed in [section 33-307, Idaho Code](#).

### **History.**

1963, ch. 13, § 42, p. 27; am. 1963, ch. 175, § 1, p. 501; am. 1965, ch. 272, § 1, p. 699; am. 1969, ch. 152, § 1, p. 478; am. 2009, ch. 107, § 4, p. 339; am. 2009, ch. 341, § 26, p. 993; am. 2011, ch. 151, § 14, p. 414.

## **STATUTORY NOTES**

### **Cross References.**

Foundation program, effect upon, § 33-1003.

School elections, § 33-401 et seq.

### **Amendments.**

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 107, in the first sentence in the second paragraph, substituted “state department of education” for “state board of

education”; in the fourth paragraph, substituted the language beginning “The department of education” and ending “shall give notice” for “The state board of education may approve or disapprove any such proposal submitted to it and shall give notice”; and rewrote the last paragraph, which formerly read: “If the division be approved, as herein provided, the board of canvassers shall thereupon notify the state board of education and the trustees of the district which has been divided. The state board shall give notice to the board of county commissioners of any county in which the newly created districts may lie.”

The 2009 amendment, by ch. 341, in the first paragraph, substituted “contiguous boundaries” for “continuous boundaries”; in the fourth paragraph, deleted “or village” following “city”; in the fifth paragraph, subdivided and rewrote the first sentence; and in the last paragraph, inserted “county,” and substituted “shall certify the results to the district and the district shall report the results to the state board” for “shall thereupon notify the state board.”

The 2011 amendment, by ch. 151, in the first sentence in the last paragraph, deleted “county certify the results to the district and the district shall report the results to” following “as herein provided.”

### **Effective Dates.**

Section 2 of S.L. 1965, ch. 272 declared an emergency. Approved March 29, 1965.

Section 2 of S.L. 1969, ch. 152 declared an emergency. Approved March 14, 1969.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**33-313. Trustee zones.** — (1) Each elementary school district shall be divided into three (3) trustee zones and each other school district shall be divided into no fewer than five (5) nor more than nine (9) trustee zones according to the provisions of section 33-501, Idaho Code. A school district that has had a change in its district boundaries because of consolidation on and after January 1, 2008, shall divide trustee zones so that each former district in the new district shall not be split into different trustee zones, unless the provisions of subsection (2) of this section cannot be satisfied.

(2) Any proposal to define the boundaries of the several trustee zones in each such school district shall include the determination, where appropriate, of the number of trustee zones in such district, and the date of expiration of the term of office for each trustee. The boundaries of the several trustee zones in each such school district shall be defined and drawn so that, as reasonably as may be, each such zone shall have approximately the same population.

(3) Whenever the area of any district has been enlarged by the annexation of all or any part of another district, or by the correction of errors in the legal description of school district boundaries, any such additional territory shall be included in the trustee zone or zones contiguous to such additional territory until such time as the trustee zones may be redefined and changed. Trustee zones may be redefined and changed not more than once every five (5) years in the manner hereinafter provided.

(4) A proposal to redefine and change trustee zones of any district may be initiated by its board of trustees and shall be initiated by its board of trustees at the first meeting following the report of the decennial census, and submitted to the state board of education, or by petition signed by not less than fifty (50) school electors residing in the district, and presented to the board of trustees of the district. Within one hundred twenty (120) days following the decennial census or the receipt of a petition to redefine and change the trustee zones of a district the board of trustees shall prepare a proposal for a change which will equalize the population in each zone in the district and shall submit the proposal to the state board of education. Any proposal shall include a legal description of each trustee zone as the same



would appear as proposed, a map of the district showing how each trustee zone would then appear, and the approximate population each would then have, should the proposal to change any trustee zones become effective.

(5) Within sixty (60) days after it has received the said proposal the state board of education may approve or disapprove the proposal to redefine and change trustee zones and shall give notice thereof in writing to the board of trustees of the district wherein the change is proposed. Should the state board of education disapprove a proposal, the board of trustees shall, within forty-five (45) days, submit a revised proposal to the state board of education. Should the state board of education approve the proposal, it shall notify the school district, the trustee zones shall be changed in accordance with the proposal and a copy of the legal description of each trustee zone and map of the district showing how each trustee zone will appear shall be filed by the school district with the county clerk.

(6) At the next regular meeting of the board of trustees following the approval of the proposal the board shall appoint from its membership a trustee for each new zone to serve as trustee until that incumbent trustee's term expires. If the current board membership includes two (2) incumbent trustees from the same new trustee zone, the board will select the incumbent trustee with the most seniority as a trustee to serve the remainder of his term. If both incumbent trustees have equal seniority, the board will choose one (1) of the trustees by the drawing of lots. If there is a trustee vacancy in any of the new zones, the board of trustees shall appoint from the patrons resident in that new trustee zone, a person from that zone to serve as trustee until the next annual meeting. At the annual election a trustee shall be elected to serve during the term specified in the election for the zone. The elected trustee shall assume office at the annual meeting of the school district next following the election.

### **History.**

1963, ch. 13, § 43, p. 27; am. 1967, ch. 403, § 1, p. 1214; am. 1969, ch. 412, § 1, p. 1143; am. 1973, ch. 125, § 1, p. 236; am. 1979, ch. 271, § 1, p. 705; am. 1984, ch. 94, § 1, p. 218; am. 1989, ch. 121, § 1, p. 267; am. 1990, ch. 31, § 1, p. 46; am. 1994, ch. 182, § 1, p. 599; am. 2001, ch. 163, § 1, p. 572; am. 2008, ch. 351, § 1, p. 968; am. 2009, ch. 341, § 27, p. 993; am. 2014, ch. 162, § 2, p. 455.

## **STATUTORY NOTES**

### **Cross References.**

School elections, § 33-401 et seq.

### **Amendments.**

The 2008 amendment, by ch. 351, added the subsection designations; and added the last sentence in subsection (1).

The 2009 amendment, by ch. 341, in subsection (5), added “and a copy of the legal description of each trustee zone and map of the district showing how each trustee zone will appear shall be filed with the county clerk”; and, in subsection (6), deleted “three (3) year” preceding the first two occurrences of “term.”

The 2014 amendment, by ch. 162, in subsection (5), inserted “it shall notify the school district” and “by the school district” in the last sentence.

### **Effective Dates.**

Section 2 of S.L. 1979, ch. 271 declared an emergency. Approved March 30, 1979.

Section 3 of S.L. 1984, ch. 94 declared an emergency. Approved March 28, 1984.

Section 2 of S.L. 2001, ch. 163 declared an emergency. Approved March 23, 2001.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**33-314. Appeal from order of state board of education.** — Any order of the state board of education affecting the organization, consolidation, division, annexation, excision, or change in boundaries of any school district, or districts, may be appealed to the district court of any county in which the district, or proposed district, lies or shall lie. Appeal may be taken by any school elector residing in the area affected by the order, or by any taxpayer on property situate in said area, and shall be tried de novo.

The pleadings and other papers shall be filed not more than sixty (60) days after notice of the order appealed, and service of two (2) copies thereof shall be made upon the state superintendent of public instruction.

**History.**

1963, ch. 13, § 44, p. 27.

**STATUTORY NOTES**

**Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

**JUDICIAL DECISIONS**

Decisions Under Prior Law

Analysis

[Appeal or writ of error.](#)

[Best interests.](#)

[Jurisdiction.](#)

[Questions subject to review.](#)

[Trial de novo.](#)

[Writ of prohibition.](#)

**[Appeal or Writ of Error.](#)**

Where an appeal was provided for from an order from the state board of education, an appeal being an adequate remedy, a writ of error could not be had. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

When the legislature provided for an “appeal” from any order of the state board of education, the supreme court could not hold that it intended to say “writ of review,” such appeal involving a petition to detach an area from one school district and join it to another. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

### **Best Interests.**

The court properly concluded that the best interests of the students of the Big Butte Area would be served by making the change sought in the petition by the qualified electors and residents of an area to separate their area from one school district and join such area to another, such area sought to be joined to being the natural trade district for residents and more accessible for high school students. Further, it would work no unnecessary financial hardship on the district losing the area. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

### **Jurisdiction.**

The phraseology directing an appeal from an order of the state board of education under the phraseology “appeal therefrom to a court of competent jurisdiction,” employed in the Constitution can mean none other than that the district court is such a court. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

### **Questions Subject to Review.**

A trial court in reviewing proceedings of the county commissioners could determine, among other things, questions of jurisdiction, compliance with the law, abuse of statutory power, and a redetermination upon any question of adjustment of property, debts, and liabilities among the districts involved. *In re Gooding County Comm’rs*, 77 Idaho 505, 295 P.2d 695 (1956).

The trial court, in reviewing proceedings of county commissioners relative to plan for organization of a school district, could not redefine or reestablish the boundaries of the district as prepared and voted on. *In re Gooding County Comm’rs*, 77 Idaho 505, 295 P.2d 695 (1956).

### **Trial de Novo.**

Right of appeal from order of county commissioners under Reorganization Act, included the right of a trial de novo. *Common Sch. Dist. No. 58 v. Lunden*, 71 Idaho 486, 233 P.2d 806 (1951).

The district court did not err in construing the statutory provision for appeal as authorizing a trial de novo, where petition of residents of area had had their petition to detach their area from one school district and join it to another denied by order of the state board of education. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

### **Writ of Prohibition.**

Writ of prohibition could not be issued to prevent county commissioners from issuing an order authorizing an election to consider proposed plan of reorganization of school districts, since petitioners were entitled to appeal from order of county commissioners. *Common Sch. Dist. No. 58 v. Lunden*, 71 Idaho 486, 233 P.2d 806 (1951).

**33-315. Cooperative educational services — Legislative intent declared.** — The legislature of the state of Idaho hereby declares its intent to encourage school districts to cooperatively provide those educational services which they are unable to offer singly or which can be provided more economically and/or more efficiently in combination with other districts.

**History.**

1967, ch. 362, § 1, p. 1042.

**33-316. Cooperative contract to employ specialized personnel and/or purchase materials.** — The trustees of two (2) or more school districts may cooperatively enter into written contract to employ specialized personnel and/or purchase materials which in the judgment of the contracting school districts are necessary or desirable for the conduct of the business of the school districts.

**History.**

1967, ch. 362, § 2, p. 1042.

**33-317. Cooperative service agency — Powers — Duties — Limitations.** — (1) Two (2) or more school districts may join together for educational purposes to form a service agency to purchase materials and/or provide services for use individually or in combination. The cooperative service agency thus formed shall be empowered to adopt bylaws, and act as a body corporate and politic with such powers as are assigned through its bylaws but limited to the powers and duties of local school districts. In its corporate capacity, this agency may sue and be sued and may acquire, hold and convey real and personal property necessary to its existence. The employees of the service agency shall be extended the same general rights, privileges and responsibilities as comparable employees of a school district. The cooperative service agency may elect to be its own fiscal agent for the purposes of providing an alternative school program, with the concurrence of the school districts for which it provides such services. In doing so the educational support program payments made pursuant to section 33-1002, Idaho Code, that would have been distributed to the school district acting as the fiscal agent, shall instead be distributed to the cooperative service agency.

(2) A properly constituted cooperative service agency may request from its member school districts funding to be furnished by a tax levy not to exceed one-tenth of one percent (.1%) for a period not to exceed ten (10) years by such member school districts. Such levy must be authorized by an election held subject to the provisions of [section 34-106, Idaho Code](#), and be conducted in each of the school districts pursuant to chapter 14, title 34, Idaho Code, and approved by a majority of the district electors voting in such election. Moneys received by the member school districts from this source shall be transferred to the cooperative service agency upon receipt of billing from the agency. Excess revenue over billing must be kept in a designated account by the district, with accrued interest, and may only be spent as budgeted by the agency.

(3) For the purpose of constructing and maintaining facilities of a cooperative service agency, in addition to the levy authorized in subsection (2) of this section, a properly constituted cooperative service agency may request from its member school districts additional funding to be furnished



by a tax levy not to exceed four-tenths of one percent (.4%) for a period not to exceed ten (10) years. Such levy must be authorized by an election held subject to the provisions of [section 34-106, Idaho Code](#), and be conducted in each of the school districts pursuant to chapter 14, title 34, Idaho Code, and approved by sixty-six and two-thirds percent (66 2/3%) of the district electors voting in such election. If one (1) or more of the member districts fails to approve the tax levy in such election, the cooperative service agency may construct the facility through the support of the member districts approving the levy, but in no event shall the levy limits authorized in this subsection (3) be exceeded. Nothing shall prevent a member district that initially failed to approve the levy from conducting a subsequent election, held pursuant to [section 34-106, Idaho Code](#), to authorize that district's participation in construction of the facility. Electors of the districts may approve continuation of such levy for an additional ten (10) years at an election held for that purpose. There is no limit on the number of elections which may be held for the purpose of continuing the levy authorized under this subsection (3) for an additional ten (10) years. The administration and accounting of moneys received by imposition of the levy shall be the same as provided in subsection (2) of this section.

### **History.**

1967, ch. 362, § 3, p. 1042; am. 1972, ch. 105, § 1, p. 216; am. 1985, ch. 107, § 2, p. 191; am. 1989, ch. 17, § 1, p. 19; am. 1991, ch. 111, § 1, p. 238; am. 2006, ch. 306, § 1, p. 945; am. 2008, ch. 104, § 1, p. 287; am. 2009, ch. 220, § 1, p. 684; am. 2009, ch. 227, § 1, p. 708; am. 2009, ch. 341, § 28, p. 993.

## **STATUTORY NOTES**

### **Amendments.**

The 2006 amendment, by ch. 306, added subsection (3).

The 2008 amendment, by ch. 104, added the third and fourth sentences in subsection (3).

This section was amended by three 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 220, substituted “four-tenths of one percent (.4%)” for “one-tenth of one percent (.1%)” in the first sentence in subsection (3).

The 2009 amendment, by ch. 227, added the last two sentences in subsection (1).

The 2009 amendment, by ch. 341, in the second sentences in subsections (2) and (3), inserted “subject to the provisions of [section 34-106, Idaho Code](#), and be conducted,” and updated the chapter and title reference; and, in the fourth sentence in subsection (3), substituted “section 34-106” for “chapter 4, title 33.”

### **Effective Dates.**

Section 2 of S.L. 2008, ch. 104 declared an emergency. Approved March 14, 2008.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**33-317A. Legislative intent — Cooperative service agency — School plant facility levy.** — (1) For the purpose of constructing and maintaining facilities of a cooperative service agency, a properly constituted cooperative service agency may request from its member school districts additional funding to be furnished by a tax levy not to exceed four-tenths of one percent (.4%) of market value for assessment purposes in each year, as such valuation existed on December 31, of the previous year, for a period not to exceed three (3) years. Such levy shall be authorized by an election held in each of the school districts pursuant to chapter 4, title 33, Idaho Code. The question of a levy to be submitted to the electors of each member school district and the notice of such election shall state the dollar amount proposed to be collected each year during the period of years in each of which the collection is proposed to be made, the percentage of votes in favor of the proposal which are needed to approve the proposed dollar amount to be collected, and the purposes for which such funds shall be used. Said notice shall be given, the election shall be conducted and the returns canvassed as provided in chapter 4, title 33, Idaho Code; and the dollar amount to be collected shall be approved only if:

- (a) Fifty-five percent (55%) of the district electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities of less than two-tenths of one percent (.2%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election;
- (b) Sixty percent (60%) of the district electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities of two-tenths of one percent (.2%) or more and less than three-tenths of one percent (.3%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election; or
- (c) Two-thirds ( $\frac{2}{3}$ ) of the district electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities of three-tenths of one percent (.3%) or more of market value for

assessment purposes as such valuation existed on December 31 of the year immediately preceding the election.

If the question be approved, each member school district of the cooperative service agency may make a levy, not to exceed four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, in each year for which the collection was approved, sufficient to collect the dollar amount approved and may again submit the question at the expiration of the period of such levy, for the dollar amount to be collected during each year, and the number of years which the board may at that time determine. Or, during the period approved at any such election, if such period be less than three (3) years or the levy be less than four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, the cooperative service agency may request that its member school districts submit to the qualified school district electors in the same manner as before, the question whether the number of years, not to exceed three (3), or the levy, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect.

(2) Physical construction may commence once moneys equal to the estimated cost of constructing the facility have been collected by the cooperative service agency, except that the cooperative service agency may commence physical construction before moneys equal to one hundred percent (100%) of the estimated cost of constructing the facility have been collected as long as language is included in the instructions to bidders reflecting the following:

- (a) Providing notice of the funding method and schedule;
- (b) Clearly stating that if all moneys are not collected according to the schedule provided, the contractor may not be paid in a timely manner and such contractor will have to await payment until the necessary moneys are collected, but in no event shall such contractor have to await payment longer than three (3) years from the date of the contractor's last pay request;

(c) Stating that the cooperative service agency accepts no liability and will pay no interest on unpaid balances;

(d) Stating that should an inability to pay occur after the fifty percent (50%) completion point of the project, the contractor must complete the project irrespective of payment status; and

(e) Stating that if an inability to pay occurs before the fifty percent (50%) completion point, the contractor has the option to suspend work, receiving no compensation for delay, and restart the project when funding becomes available.

(3) If one (1) or more of the member districts fails to approve the tax levy in such election, the cooperative service agency may construct the facility through the support of the member districts approving the levy, but in no event shall the levy limits authorized in this section be exceeded.

(4) Nothing shall prevent a member district that initially failed to approve the levy from conducting a subsequent election, held pursuant to chapter 4, title 33, Idaho Code, to authorize that district's participation in construction of the facility.

(5) The administration and accounting of moneys received by imposition of the levy provided for in this section shall be the same as provided in [section 33-317\(2\), Idaho Code](#).

### **History.**

[I.C., § 33-317A](#), as added by 2009, ch. 220, § 2, p. 684; am. 2011, ch. 189, § 1, p. 540.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 189, rewrote subsection (2), which formerly read: “No physical construction shall commence on any facility to be financed pursuant to the provisions of this section until the estimated cost of constructing such facility has been collected by the cooperative service agency.”

**33-318. Fair share of expenses — Appropriation from school district funds.** — For the services and materials received from a cooperative service agency, boards of trustees may appropriate from school district funds and pay to the service agency an amount determined by the governing body of the agency to be their fair share of the expenses involved.

**History.**

1967, ch. 362, § 4, p. 1042.

**33-319. Rural school districts — Rural public charter schools. — (1)**

A school district shall be considered a rural school district if it meets one (1) of the following two (2) criteria:

(a) There are fewer than twenty (20) enrolled students per square mile within the area encompassed by the school district's boundaries; or

(b) The county in which a plurality of the school district's market value for assessment purposes is located contains less than twenty-five thousand (25,000) residents, based on the most recent decennial United States census.

(2) A public charter school shall be considered a rural public charter school if the school district in which the public charter school is physically located meets the definition of a rural school district, pursuant to subsection (1) of this section. A public charter school that is also a virtual school shall be considered a rural public charter school if over fifty percent (50%) of its enrolled students reside within school districts that meet the definition of a rural school district pursuant to subsection (1) of this section.

**History.**

I.C., § 33-319, as added by 2009, ch. 239, § 1, p. 739.

**33-320. Continuous improvement plans and training.** — (1) Each school district and public charter school in Idaho shall develop an annual plan that is part of a continuous focus on improving the student performance of the district or public charter school.

(2)(a) The board of trustees and the superintendent shall collaborate on the plan and engage students, parents, educators and the community as appropriate. The board of directors and the administrator of a public charter school shall collaborate on the plan and engage students, parents, educators and the community as appropriate.

(b) The annual continuous improvement plan shall:

(i) Be data driven, specifically in student outcomes, and shall include, but not be limited to, analyses of demographic data, student achievement and growth data, graduation rates, and college and career readiness;

(ii) Set clear and measurable targets based on student outcomes;

(iii) Include a clearly developed and articulated vision and mission;

(iv) Include key indicators for monitoring performance;

(v) Include, at a minimum, the student achievement and growth metrics reported on each school and district's report card as required by the state board of education and published by the state department of education; and

(vi) Include a report of progress toward the previous year's improvement goals.

(c) The annual continuous improvement plan must be reviewed and updated annually no later than October 1 each year.

(d) The board of trustees or the board of directors shall continuously monitor progress toward the goals by utilizing relevant data to measure growth. The progress shall be included in evaluations of the district superintendent or administrator of a public charter school.



(3) The plan must be made available to the public and shall be posted on the school district or charter school website.

(4) Of the moneys appropriated in the public schools educational support program, up to six thousand six hundred dollars (\$6,600) shall be distributed to each school district and public charter school to be expended for training purposes for district superintendents and boards of trustees, public charter school administrators and boards of directors. Funds shall be distributed on a reimbursement basis based on a process prescribed by the superintendent of public instruction. Qualified training shall include training for continuous improvement processes and planning, strategic planning, finance, superintendent evaluations, public charter administrator evaluations, ethics and governance.

(5) The state board of education shall be granted rulemaking authority to establish appropriate procedures, qualifications and guidelines for qualified training providers and shall prepare a list of qualified training providers within the state of Idaho.

### **History.**

**I.C., § 33-320**, as added by 2014, ch. 112, § 1, p. 321; am. 2015, ch. 69, § 1, p. 187; am. 2016, ch. 239, § 1, p. 635; am. 2019, ch. 265, § 1, p. 777.

## **STATUTORY NOTES**

### **Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

The 2015 amendment, by ch. 69, substituted “Continuous improvement plans” for “Strategic planning” in the section heading; in subsection (1), substituted “an annual plan that is part of a continuous focus” for “and maintain a strategic plan that focuses”; substituted “annual continuous improvement plan ” for “strategic plan” in the introductory paragraph in paragraph (2)(b) and in paragraph (2)(c); added paragraph (2)(b)(v); in paragraph (2)(c), deleted “For the 2014-2015 school year, the strategic plan shall be adopted on or before September 1” from the beginning, and substituted “October 1 each year” for “August 1 every year thereafter” at

the end; deleted “strategic” preceding “plan” near the beginning of subsection (3); in subsection (4), substituted “six thousand six hundred dollars (\$6,600)” for “two thousand dollars (\$2,000)” in the first sentence and inserted “continuous improvement processes and planning” in the last sentence.

The 2016 amendment, by ch. 239, added present paragraph (2)(b)(v) and redesignated former paragraph (2)(b)(v) as (2)(b)(vi); and added present subsection (5) and redesignated former subsection (5) as subsection (6).

The 2019 amendment, by ch. 265, rewrote paragraph (2)(b)(v), which formerly read: “Include, at a minimum, the statewide student readiness and student improvement metrics; and”; deleted former subsection (5), which defined “statewide student readiness and improvement metrics”; and redesignated former subsection (6) as present subsection (5).

## **33-321 — 33-350. [Reserved.]**

**33-351. Subdistricts — Authority to establish — Election.** — The board of trustees of any school district which operates two (2) or more high schools may at any time, on its own motion or upon the filing with the board of trustees of a petition so requesting signed by not less than fifty (50) school electors, call an election to submit to the qualified electors of the school district the question of the creation of one (1) or more school subdistricts. Such election shall be called, the election shall be held subject to the provisions of section 34-106, Idaho Code, and shall be conducted pursuant to the provisions of chapter 14, title 34, Idaho Code. The proceedings calling such election shall set forth the boundaries of each proposed school subdistrict and shall provide for the submission of the question of the creation of each such school subdistrict to the qualified electors of the school district and to the qualified electors residing within the proposed boundaries of each such school subdistrict. No proposition for the creation of a school subdistrict shall be determined to have carried unless such proposition shall receive a majority of the votes cast on such proposition by the qualified electors residing within the boundaries of the school district and a majority of the votes cast on such proposition by the qualified electors residing within the boundaries of the proposed school subdistrict. Whenever the creation of more than one (1) school subdistrict is submitted at the same election, separate ballots and separate propositions shall be used in voting on the question of creating each school subdistrict.

### **History.**

I.C., § 33-351, as added by 1986, ch. 61, § 1, p. 177; am. 2009, ch. 341, § 29, p. 993.

## **STATUTORY NOTES**

### **Prior Laws.**

Former sections 33-351 to 33-555, which comprised S.L. 1971, ch. 116, §§ 1 to 5, p. 397, were repealed by S.L. 1979, ch. 76, § 1.

**Amendments.**

The 2009 amendment, by ch. 341, in the second sentence, inserted “subject to the provisions of [section 34-106, Idaho Code](#)” and updated the chapter and title reference.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**33-352. Establishment.** — Whenever a proposition for the creation of a school subdistrict shall have been approved in the manner set forth in section 33-351, Idaho Code, the board of trustees of the school district shall enter in its minutes an order providing for the establishment and creation of the school subdistrict setting forth therein the legal description of the boundaries thereof and shall designate therein a name for such school subdistrict. Within ten (10) days after the entry of the order creating such school subdistrict, the board of trustees shall certify the fact of the creation of such school subdistrict to the state board of education and to the board of county commissioners of each county in which any part of the school subdistrict is located, by the filing of a certified copy of the order of the board of trustees creating and establishing the school subdistrict.

**History.**

I.C., § 33-352, as added by 1986, ch. 61, § 1, p. 177.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-352 was repealed. See Prior Laws, § 33-351.

**33-353. Nature and powers.** — Each school subdistrict created and established as provided in this act shall be a political subdivision of the state of Idaho. The board of trustees entering the order creating and establishing such school subdistrict shall be the governing body of all school subdistricts created by it, and shall possess the power to order, conduct and hold all elections in such school subdistricts for the purpose of incurring debt and issuing bonds and for the purpose of voting school plant facilities reserve fund levies.

**History.**

I.C., § 33-353, as added by 1986, ch. 61, § 1, p. 177.

**STATUTORY NOTES**

**Cross References.**

School plant facilities reserve fund, § 33-901.

**Prior Laws.**

Former § 33-353 was repealed. See Prior Laws, § 33-351.

**Compiler's Notes.**

The term “this act” in the first sentence refers to S.L. 1986, Chapter 61, which is codified as §§ 33-351 to 33-355.

**33-354. Indebtedness — Bond issues.** — School subdistricts may incur debt and issue bonds for the same purposes as set forth in section 33-1102, Idaho Code. The governing body of a school subdistrict may submit to the qualified electors of the school subdistrict the question of whether the governing body of the school subdistrict shall be empowered to issue negotiable bonds of the school subdistrict in an amount and for a period of time to be named in the notice of election. Notice of the bond election shall be given, the election shall be conducted and the returns thereof canvassed and the qualifications of electors voting or offering to vote shall be as provided in title 34, Idaho Code. The question of the issuance of such bonds shall be approved only if the percentage of votes cast at such election were cast in favor thereof as that which is now, or may hereafter be, set by the constitution of the state of Idaho. All such bonds shall be authorized, issued and sold pursuant to the provisions of sections 33-1107 through 33-1121, Idaho Code. No bonds of a school subdistrict may be issued, however, if the issuance of such bonds would cause the percentage of market value for assessment purposes of taxable property within the boundaries of the school subdistrict represented by the aggregate outstanding indebtedness of the school subdistrict, when added to the percentage of the assessed valuation of taxable property represented by the aggregate outstanding indebtedness of the school district within which the school subdistrict lies, to exceed five percent (5%). As used in the preceding sentence hereof, “market value for assessment purposes,” “aggregate outstanding indebtedness” and “issuance” shall have the same meanings as set forth in section 33-1103, Idaho Code. Upon the approval of the issuance of such bonds, the same may be issued by the governing body of the school subdistrict on behalf of the school subdistrict at any time within two (2) years from the date of such election. Wherever in title 34, Idaho Code, and in sections 33-1107 through 33-1121, Idaho Code, reference is made to “school district”; for purposes of this chapter it shall be deemed to refer to school subdistricts.

### **History.**

**I.C., § 33-354**, as added by 1986, ch. 61, § 1, p. 177; am. 2009, ch. 341, § 30, p. 993; am. 2013, ch. 183, § 12, p. 437; am. 2014, ch. 260, § 1, p. 652.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-354 was repealed. See Prior Laws, § 33-351.

### **Amendments.**

The 2009 amendment, by ch. 341, in the first sentence, substituted “new schoolhouses” for “new school houses”; in the third and last sentences, substituted “title 34” for “sections 33-402 through 33-423”; and, in the last sentence, substituted “chapter” for “act.”

The 2013 amendment, by ch. 183, substituted “sections 33-1107 through 33-1121” for “sections 33-1107 through 33-1125” in the fifth and last sentences.

The 2014 amendment, by ch. 260, rewrote the first sentence in the section, which formerly read: “School subdistricts may incur debt and issue bonds for the same purposes of acquiring, purchasing or improving a school site or sites, acquiring or constructing new schoolhouses, remodeling existing buildings, constructing additions thereto, including all necessary furnishings and equipment, and all lighting, heating, ventilation, sanitation facilities and appliances necessary to operate the buildings of the new school subdistrict”.

### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**33-355. Levy for plant facilities reserve fund — Election.** — The governing body of a school subdistrict may call an election in the school subdistrict, pursuant to the provisions of section 33-804, Idaho Code, for the purpose of submitting to the qualified school electors of the school subdistrict the question of a levy by a school subdistrict of a school plant facilities reserve fund tax.

**History.**

I.C., § 33-355, as added by 1986, ch. 61, § 1, p. 177.

**STATUTORY NOTES**

**Cross References.**

School plant facilities reserve fund, § 33-901.

**Prior Laws.**

Former § 33-355 was repealed. See Prior Laws, § 33-351.

### **33-356. School building design and energy efficiency. —**

(1)(a) School districts may seek to qualify for a reduction in building replacement value calculation for qualified, newly constructed public school buildings pursuant to [section 33-1019\(4\), Idaho Code](#).

(b) Each school district that seeks to qualify a newly constructed building for the building replacement value calculation provided for in [section 33-1019\(4\), Idaho Code](#), shall use integrated design practices and fundamental commissioning in the design and construction of such building.

(c) Following the first year of operations of a building that was certified in accordance with the provisions of subsection (5)(a) of this section, the germane school district shall perform or cause to be performed an annual optimization review of the qualifying building. Such annual optimization review shall be performed in a manner that is consistent with rules promulgated pursuant to this section. Such school district shall thereafter perform or cause to be performed an annual optimization review each year it seeks to qualify such building for the building replacement value calculation provided in [section 33-1019\(4\), Idaho Code](#).

(2) For purposes of this section, the following terms shall have the following meanings:

(a) “Fundamental commissioning” means the use of a third party to review building design, building system specifications and to specify and monitor preoccupancy system testing to ensure functional integration of specified systems and functional operation of systems at the completion of a project.

(b) “Integrated design” means a process to develop consensus among the project team and owner as to the energy savings and building performance goals of the project and to identify design strategies to achieve those goals, including documentation strategies for design decisions to ensure accurate implementation of design through construction.

(3) It shall be the duty and responsibility of the administrator of the division of building safety to provide assistance to school districts to ensure school districts can access the technical and educational support needed to implement the processes of integrated design and fundamental commissioning. It shall further be the duty and responsibility of the administrator of the division of building safety to compile and cause to be made available to school districts a list of all third party building commissioning agents in Idaho and contiguous states. The administrator shall ensure that all commissioning agents that appear on such list are certified by the building commissioning association or other similar certifying entity. The administrator shall ensure that such list is updated annually.

(4) The administrator of the division of building safety is hereby authorized and directed to promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, that provide the guidance, education and technical information necessary for school districts to implement the processes of integrated design and fundamental commissioning. The administrator is authorized to expand upon the terms defined in subsection (2) of this section, and to provide additional definitions as needed. In addition, the administrator shall promulgate rules governing annual optimization review and evaluation of germane building systems to ensure optimal performance of such systems and maximum energy savings and building performance. Such rules shall include, but not be limited to, a definition for the minimum scope of work required for annual optimization.

(5)(a) The administrator of the division of building safety shall certify to the state department of education when a building has qualified for school building replacement value calculation exclusions as provided for in [section 33-1019\(4\), Idaho Code](#). As part of such certification, the administrator shall state specifically the school building(s) and the square footage thereof that shall be excluded from the school building replacement value calculations.

(b) Following the first year of operations of a building that was certified in accordance with the provisions of subsection (5)(a) of this section, the administrator of the division of building safety shall certify to the state department of education when such building has undergone an annual

optimization review as provided in subsection (1)(c) of this section. Such certification shall ensure that the qualifying building meets or exceeds the requirements of annual optimization review rules promulgated pursuant to subsection (4) of this section.

### **History.**

I.C., § 33-356, as added by 2009, ch. 169, § 2, p. 512.

## **STATUTORY NOTES**

### **Cross References.**

Administrator of division of building safety, § 54-2607.

### **Legislative Intent.**

Section 1 of S.L. 2009, ch. 169 provided: “Legislative Intent. It is the intent of the Legislature that:

“(1) Every dollar spent on energy costs in an Idaho public school is a dollar that is not spent in the direct education of students in the classroom. As energy costs increase, the diversion of funding away from the classroom will accelerate. The state has a primary interest in minimizing K-12 public school building energy costs since funding for energy comes directly from the state General Fund.

“(2) School districts recognize that funding will always be limited and that efficient use of every dollar is vital to providing the highest possible level of educational services. It is apparent that designing and constructing more energy efficient buildings accrue cumulative benefits to both the state and to the school district. This is because any energy efficiency built into a new school building will save money each and every year of operation for the life of that school building. Small gains in energy efficiency result in large payoffs over the life of operations of a building.

“(3) This act provides an incentive for school districts to use certain design and construction processes for constructing high quality school buildings. Using two processes, integrated design and fundamental commissioning, will result in efficient design and construction implementation of higher performance new public school buildings. Using this design and construction process, it is the intent of this act to make

energy efficiency a priority for our school districts in the design and construction of new public school buildings.”

**Compiler’s Notes.**

Section 4 of S.L. 2009, ch. 169 provided: “State Department of Education — Report. On or before July 1, 2018, the State Department of Education shall submit a report to the State Board of Education and the chairmen of the following legislative committees: Senate State Affairs; House Environment, Energy and Technology; Senate and House Education; and the Energy, Environment and Technology Interim Committee. Such report shall detail the extent to which public school districts have participated, implemented and benefited from the provisions of this act.”

For more on building commissioning association, referred to in subsection (3), see *<https://www.bcxa.org>*.

The “s” enclosed in parentheses so appeared in the law as enacted.

**33-357. Creation of internet based expenditure website.** — (1) As used in this section, unless otherwise required:

(a) “Education provider” means:

- (i) A school district, including a specially chartered district organized and existing pursuant to law;
- (ii) A cooperative services agency or intermediate school district;
- (iii) A public charter school authorized pursuant to state law;
- (iv) A publicly funded governmental entity established by the state for the express purpose of providing online courses.

(b) “Entity” means a corporation, association, union, limited liability company, limited liability partnership, grantee, contractor, local government or other legal entity, including a nonprofit corporation or an employee of the education provider.

(c) “Public record” shall have the same meaning as set forth in chapter 1, title 74, Idaho Code.

(2)(a) No later than December 1, 2011, each education provider shall develop and maintain a publicly available website where the education provider’s expenditures are posted in a nonsearchable PDF format, a searchable PDF format, a spreadsheet or in a database format.

(b) The internet based website shall include the following data concerning all expenditures made by the education provider:

- (i) The name and location or address of the entity receiving moneys;
- (ii) The amount of expended moneys;
- (iii) The date of the expenditure;
- (iv) A description of the purpose of the expenditure, unless the expenditure is self-describing;
- (v) Supporting contracts and performance reports upon which the expenditure is related when these documents already exist;

- (vi) To the extent possible, a unique identifier for each expenditure;
  - (vii) The annual budget approved by the education provider's governing board, to be posted within thirty (30) days after its approval; and
  - (viii) Any current master labor agreements approved by the education provider's governing board.
- (c) The expenditure data shall be provided in an open structured data format that may be downloaded by the user.
- (d) The internet based website shall contain only information that is a public record or that is not confidential or otherwise exempt from public disclosure pursuant to state or federal law.
- (3) The education provider shall:
- (a) Update the expenditures contained on the internet based website at least monthly;
  - (b) Archive all expenditures, which shall remain accessible and on the internet based website for a number of years, consistent with state law regarding keeping and retention of records;
  - (c) Make the internet based website easily accessible from the main page of the education provider's website; and
  - (d) The website shall include those records beginning on the effective date of this act on July 1, 2011, and all data prior to that date shall be available by way of a public records request.

**History.**

**I.C., § 33-357**, as added by 2010, ch. 263, § 2, p. 665; am. 2013, ch. 94, § 1, p. 230; am. 2015, ch. 141, § 60, p. 379.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 94, added paragraphs (vii) and (viii) in subsection (2)(b).

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in paragraph (1)(c).

**Legislative Intent.**

Section 1 of S.L. 2010, ch. 263 provided “Legislative Intent. The Legislature finds that taxpayers should have easy access to the details of how our public schools are spending both taxpayer dollars and revenue raised from other sources. Access to this financial data in an electronic form should facilitate increasing transparency in public school financial matters. Therefore, it is the intent of the Legislature to direct each Idaho school district and education provider to create an internet based website to detail the expenditures of school districts and other education providers.”

**Compiler’s Notes.**

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions before being amended again in 2013.

**Effective Dates.**

Section 3 of S.L. 2010, ch. 263 provided that the act should take effect on and after July 1, 2011.





## **CHAPTER 4**

### **SCHOOL ELECTIONS**

#### **Section.**

33-401. Legislative intent.

33-402. Notice requirements.

33-403. Conduct of elections. [Repealed.]

33-403A. Assistance to voter. [Repealed.]

33-403B. Spoiled ballots. [Repealed.]

33-403C. Challengers — Watchers. [Repealed.]

33-404. Places elections to be held.

33-405. Qualifications of school electors.

33-405A. Residence defined. [Repealed.]

33-405B. Challenge of voters. [Repealed.]

33-406. Absentee voting. [Repealed.]

33-406A. Challenging absentee elector's vote. [Repealed.]

33-407. Return and canvass of elections. [Repealed.]

33-408. Election contests — Grounds of contest. [Repealed.]

33-409. Bond election and levy increases — Time for filing — Validation of elections and bonds. [Repealed.]

33-410. Misconduct of judges. [Repealed.]

33-411. Jurisdiction — Election contests. [Repealed.]

33-412. Who may contest an election. [Repealed.]

33-413. Complaint and security for costs. [Repealed.]

33-414. Complaint — Specific allegations. [Repealed.]

33-415. Issuance of summons. [Repealed.]

33-416. Procedure in general. [Repealed.]

33-417. Voters to testify as to qualifications. [Repealed.]

33-418. Liability for costs. [Repealed.]

33-419. Form of judgment. [Repealed.]

33-420. Determination of tie vote. [Repealed.]

33-421. Election declared void. [Repealed.]

33-422. Appeal. [Repealed.]

33-423. Applicability of penal provisions. [Repealed.]

33-424. Initiating recall proceedings. [Repealed.]

33-425 — 33-427. Petition — Where filed — Ballot synopsis —  
Determination by magistrate court — Correction of ballot synopsis.  
[Repealed.]

33-428. Filing petitions — Time limitations. [Repealed.]

33-429. Petition — Form. [Repealed.]

33-430. Petition — Size. [Repealed.]

33-431. Number of signatures required. [Repealed.]

33-432. Canvassing petition for sufficiency of signatures — Notice.  
[Repealed.]

33-433. Verification and canvass of signatures — Procedure. [Repealed.]

33-434. Fixing date for recall election — Notice. [Repealed.]

33-435. Response to recall petition statement. [Repealed.]

33-436. Destruction of insufficient recall petition. [Repealed.]

33-437. Invalid names — Record of. [Repealed.]

33-438. Conduct of election — Form of ballot. [Repealed.]

33-439. Ascertaining the result — When recall effective. [Repealed.]

33-440. Enforcement provisions — Mandamus — Appeals. [Repealed.]

33-441. Violations by signers. [Repealed.]

33-442. Violations — Corrupt practices. [Repealed.]

33-443. Limitation of ballot access for multi-term incumbents. [Repealed.]

**33-401. Legislative intent.** — The legislature finds that a comprehensive and integrated statutory scheme for the conduct of school elections is critical to the public’s understanding of and confidence in the public school election system. It is therefore the intent of the legislature that the provisions of title 18, Idaho Code, and the provisions of title 34, Idaho Code, shall be fully applicable and shall govern all school elections. All school elections shall be administered by the clerk of the county wherein the district lies. Elections in a joint school district shall be conducted jointly by the clerks of the respective counties, and the clerk of the home county shall exercise such powers as are necessary to coordinate the election.

**History.**

I.C., § 33-401, as added by 1982, ch. 60, § 1, p. 106; am. 2009, ch. 341, § 31, p. 993.

**STATUTORY NOTES**

**Cross References.**

Election contests other than legislative and state executive offices, § 34-2001 et seq.

Voters, § 34-401 et seq.

**Amendments.**

The 2009 amendment, by ch. 341, in the second sentence, deleted “with the exception of chapter 24, title 34, Idaho Code, and” preceding “the provisions of title 18,” and substituted “and the provisions of title 34, Idaho Code, shall be fully applicable and shall govern all school elections” for “which shall be fully applicable, or unless otherwise specifically provided, all school elections shall be governed by the provisions of this chapter”; and added the last two sentences.

**Compiler’s Notes.**

Former § 33-401 was amended and redesignated as § 33-402 by S.L. 1982, ch. 60, § 2.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**33-402. Notice requirements.** — (1) Notice of annual meeting of elementary school districts as provided for in section 33-510, Idaho Code, and of intent to discontinue a school, as provided for in section 33-511, Idaho Code, and annual budget hearing as provided for in section 33-801, Idaho Code, shall be given by posting for not less than ten (10) days, and publishing once in a newspaper as provided in section 60-106, Idaho Code, published within the district, or, if there be none, then in a newspaper as provided in section 60-106, Idaho Code, published in the county in which such district lies. If more than one (1) newspaper is printed and published in said district or county, then in the newspaper most likely to give best general notice of the election within said district; provided that if no newspaper is published in the said district or county, then in a newspaper as provided in section 60-106, Idaho Code, most likely to give best general notice of the election within the district. If a financial emergency has been declared pursuant to section 33-522, Idaho Code, the notice of annual meeting and the notice of the annual budget hearing shall be posted pursuant to subsection (2) of this section, for not less than five (5) days, and by such further notice as shall provide reasonable notice to the patrons of the school district if publication in a newspaper is not feasible.

(2) Notices calling for bids for the acquisition, use, or disposal of real and personal property as provided for in [section 33-601, Idaho Code](#), and contracting for transportation services as provided for in [section 33-1510, Idaho Code](#), shall be given in a newspaper of general circulation as required by chapter 1, title 60, Idaho Code, except that the notice for contracting for transportation services shall be made not less than four (4) weeks before the date of opening bids.

(3) Proof of posting notice shall be upon the affidavit of the person posting the same; and proof of publication shall be upon the affidavit of the publisher of the newspaper or newspapers respectively. Such affidavits shall be filed with the board by the clerk responsible for the posting and the publishing of said notice.

**History.**

1963, ch. 13, § 45, p. 27; am. 1972, ch. 93, § 1, p. 203; am. 1978, ch. 65, § 1, p. 131; am. 1979, ch. 130, § 1, p. 401; am. and redesign. 1982, ch. 60, § 2, p. 106; am. 1985, ch. 235, § 1, p. 558; am. 1992, ch. 187, § 1, p. 581; am. 1997, ch. 40, § 1, p. 74; am. 2005, ch. 213, § 4, p. 637; am. 2007, ch. 166, § 1, p. 494; am. 2009, ch. 171, § 1, p. 541; am. 2009, ch. 341, § 32, p. 993; am. 2011, ch. 151, § 15, p. 414.

## **STATUTORY NOTES**

### **Cross References.**

Publication requirements, § 60-109.

School plant facilities reserve fund, § 33-901.

### **Amendments.**

The 2007 amendment, by ch. 166, in subsection (g), inserted “in a newspaper of general circulation,” and substituted “chapter 1, title 60, Idaho Code” for “chapter 28, title 67, Idaho Code.”

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 171, changed the designation scheme; in subsection (1)(a), deleted “between which” following “hours”; and added the last sentence in subsection (6).

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

The 2011 amendment, by ch. 151, deleted surplus language at the beginning of the section which resulted from conforming the 2009 amendments and redesignated former subsections (6) through (8) as subsections (1) through (3).

### **Compiler’s Notes.**

This section was formerly compiled as § 33-401.

Former § 33-402 was amended and redesignated as § 33-403 by S.L. 1982, ch. 60, § 3 and subsequently repealed by S.L. 2009, ch. 341, § 33.



This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions, as amended by S.L. 2011, ch. 151.

### **Effective Dates.**

Section 2 of S.L. 1972, ch. 93, declared an emergency. Approved March 6, 1972.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

## **JUDICIAL DECISIONS**

### **Notice.**

The notice of election published by the school district for the purpose of giving notice of a supplemental levy satisfied the requirement of this section. [\*Lind v. Rockland Sch. Dist.\*, 120 Idaho 928, 821 P.2d 983 \(1991\)](#).

### **Decisions Under Prior Law**

### **Requirements of Notice.**

Requirement that notice state “purpose” of election meant general purpose for which money was to be used and not items of expenditure. [\*King v. Independent Sch. Dist. No. 37\*, 46 Idaho 800, 272 P. 507 \(1928\)](#).

Voter was entitled to know from notice what money was to be used for; but that was not made, by former statute, the essential question for his consideration. [\*King v. Independent Sch. Dist. No. 37\*, 46 Idaho 800, 272 P. 507 \(1928\)](#).

### **33-403. Conduct of elections. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 33, effective January 1, 2011.

#### **History.**

1963, ch. 13, § 46, p. 27; am. and redesign. 1982, ch. 60, § 3, p. 106; am. 1985, ch. 115, § 1, p. 237; am. 1988, ch. 220, § 1, p. 418; am. 1991, ch. 53, § 1, p. 96.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

This section was formerly compiled as § 33-402.

Former § 33-403 was amended and redesignated as § 33-404 by S.L. 1982, ch. 60, § 7.

**33-403A. Assistance to voter. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 33, effective January 1, 2011.

**History.**

I.C., § 33-403A, as added by 1982, ch. 60, § 4, p. 106; am. 2010, ch. 235, § 12, p. 542.

Idaho Code 33-403B

**33-403B. Spoiled ballots. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 33, effective January 1, 2011.

**History.**

I.C., § 33-403B, as added by 1982, ch. 60, § 5, p. 106.

### **33-403C. Challengers — Watchers. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 33, effective January 1, 2011.

#### **History.**

I.C., § 33-403C, as added by 1982, ch. 60, § 6, p. 106; am. 2006, ch. 232, § 1, p. 689.

**33-404. Places elections to be held.** — In elections involving excision and annexation of territory, or the consolidation of school districts, or the division of a school district, each notice of election shall designate that polling places shall be established, as follows:

In an election involving excision and annexation of territory, polling places shall be established pursuant to [section 34-302, Idaho Code](#), in the district to which the territory or area is to be annexed; in the territory or area to be annexed; and in the remainder of the school district from which the territory or area is to be excised.

In an election involving consolidation of school districts, polling places shall be established pursuant to [section 34-302, Idaho Code](#).

In an election involving the division of a school district, polling places shall be established pursuant to [section 34-302, Idaho Code](#).

In any school election held within a joint school district, polling places shall be designated and established pursuant to [section 34-302, Idaho Code](#), within such district, in each county.

### **History.**

1963, ch. 13, § 47, p. 27; am. and redesis. 1982, ch. 60, § 7, p. 106; am. 1983, ch. 37, § 1, p. 88; am. 2009, ch. 341, § 34, p. 993.

## **STATUTORY NOTES**

### **Amendments.**

The 2009 amendment, by ch. 341, in the second and last paragraphs, inserted the section reference; in the third and fourth paragraphs, substituted the section reference for “in each district proposed to be consolidated” and “in each proposed trustee zone of each school district proposed to be created by the division,” respectively; and, in the last paragraph, deleted “in which ten (10) or more electors of the district reside” from the end, and deleted the last sentence, which pertained to polling places where less than ten electors reside.

**Compiler's Notes.**

This section was formerly compiled as § 33-403.

Former § 33-404 was amended and redesignated as § 33-405 by S.L. 1982, ch. 60, § 8.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**33-405. Qualifications of school electors.** — Any person voting, or offering to vote, in any school election must be, at the time of the election eighteen (18) years of age and a United States citizen who has resided in this state and in the school district at least thirty (30) days next preceding the election in which the elector desires to vote. In the case of election of trustees, the elector must be a resident of the same trustee zone as the candidate or candidates for school district trustees for whom the elector offers to vote for at least thirty (30) days next preceding the election in which the elector desires to vote.

Registration requirements set forth in chapter 4, title 34, Idaho Code, shall be applicable to school elections. The elector may be required to furnish to the election official proof of residence, which proof shall be established by either an Idaho motor vehicle driver's license or any other document definitely establishing the elector's residence within the school district or trustee zone.

### **History.**

1963, ch. 13, § 48, p. 27; am. 1969, ch. 177, § 1, p. 533; am. 1970, ch. 37, § 1, p. 81; am. 1970, ch. 136, § 1, p. 331; am. 1971, ch. 25, § 3, p. 61; am. and redesisg. 1982, ch. 60, § 8, p. 106; am. 1985, ch. 257, § 1, p. 711; am. 1987, ch. 256, § 1, p. 519; am. 1989, ch. 88, § 67, p. 151; am. 2009, ch. 341, § 35, p. 993.

## **STATUTORY NOTES**

### **Amendments.**

The 2009 amendment, by ch. 341, in the first sentence in the last paragraph, deleted “and in addition to the foregoing qualifications, a school elector shall have executed, in writing and immediately before voting, a form of the elector's oath attesting that he or she possesses the qualifications of a school elector prescribed by this section and indicating the mailing address, residence address or any other necessary information definitely locating the residence of the school elector” from the end.

### **Compiler's Notes.**



This section was formerly compiled as § 33-404.

Former § 33-405 was amended and redesignated as § 33-406 by S.L. 1982, ch. 60, § 11 and subsequently repealed by S.L. 2009, ch. 341, § 36.

### **Effective Dates.**

Section 9 of S.L. 1971, ch. 25 declared an emergency. Approved February 16, 1971.

Section 5 of S.L. 1987, ch. 256 (approved April 1, 1987 at 9:45 AM) declared an emergency. However, such section was repealed by § 1 of S.L. 1987, ch. 252 (approved April 1, 1987 at 2:50 PM).

Section 70 of S.L. 1989, ch. 88 provided that the act would become effective April 1, 1990.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law**

#### **Analysis**

Constitutionality.

Property requirements.

Reorganization with assumption of debt.

Residence of voters.

### **Constitutionality.**

There was a lack of uniformity in the law on the qualifications of school electors and an attempt by legislature, 1917, ch. 47, p. 106, to make the law uniform was declared unconstitutional. *Griffith v. Owens*, 30 Idaho 647, 166 P. 922 (1917).

### **Property Requirements.**

While it is apparent that property qualifications are invalid insofar as the franchise to vote in general bond elections are concerned under the ruling in *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d

523 (1970), such ruling does not affect prior ruling of Idaho supreme court in *Muench v. Paine*, 93 Idaho 473, 463 P.2d 939 (1970) holding such qualifications valid as to elections already held. *Muench v. Paine*, 94 Idaho 12, 480 P.2d 196 (1971).

### **Reorganization with Assumption of Debt.**

Portion of plan for reorganization of school districts which provided that the debt of the two districts, as formerly organized, be assumed by the new school district, which resulted in making taxpayers of one of the old school districts proportionately liable for the bonded indebtedness of the other old school district, was invalid where the voters were not limited to those persons possessing the qualifications of voting at a bond election and the plan was not carried by the two-thirds majority required to approve a bonded indebtedness. *In re Joint Class A Sch. Dist. No. 370*, 77 Idaho 453, 295 P.2d 249 (1956).

### **Residence of Voters.**

Bond election was not invalid, even though some of the voters voted in county in which they were not resident, contrary to Idaho Const., Art. VI, § 2, since constitutional provision was directory only after the election had been held. *Lewis v. Woodall*, 72 Idaho 16, 236 P.2d 91 (1951).

## **RESEARCH REFERENCES**

**A.L.R.** — Residence for purpose of voting. 44 A.L.R.3d 797.

Residence of students for voting purposes. 44 A.L.R.3d 797.

**33-405A. Residence defined. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-405A, as added by 1982, ch. 60, § 9, p. 106; am. 1989, ch. 288, § 1, p. 713; am. 1996, ch. 322, § 19, p. 1029.

**33-405B. Challenge of voters. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-405B, as added by 1982, ch. 60, § 10, p. 106.

### **33-406. Absentee voting. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

#### **History.**

1963, ch. 13, § 49, p. 27; am. 1967, ch. 12, § 1, p. 20; am. and redesign. 1982, ch. 60, § 11, p. 106; am. 1983, ch. 71, § 1, p. 156; am. 1987, ch. 179, § 1, p. 355; am. 1992, ch. 187, § 2, p. 581; am. 1994, ch. 161, § 1, p. 368; am. 1998, ch. 56, § 1, p. 209; am. 2000, ch. 205, § 1, p. 514; am. 2006, ch. 232, § 2, p. 689.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

This section was formerly compiled as § 33-405.

Former § 33-406 was amended and redesignated as § 33-407 by S.L. 1982, ch. 60, § 13 and subsequently repealed by S.L. 2009, ch. 341, § 36.

**33-406A. Challenging absentee elector's vote. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-406A, as added by 1982, ch. 60, § 12, p. 106.

**33-407. Return and canvass of elections. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

1963, ch. 13, § 50, p. 27; am. and redesign. 1982, ch. 60, § 13, p. 106; am. 2009, ch. 107, § 5, p. 339.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-406.

**33-408. Election contests — Grounds of contest. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-408, as added by 1982, ch. 60, § 14, p. 106.



**33-409. Bond election and levy increases — Time for filing —  
Validation of elections and bonds. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

**I.C., § 33-409**, as added by 1982, ch. 60, § 15, p. 106; am. 1982, ch. 313, § 1, p. 787.

**33-410. Misconduct of judges. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-410, as added by 1982, ch. 60, § 16, p. 106.

### **33-411. Jurisdiction — Election contests. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

#### **History.**

I.C., § 33-411, as added by 1982, ch. 60, § 17, p. 106; am. 1982, ch. 313, § 2, p. 787.

**33-412. Who may contest an election. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-412, as added by 1982, ch. 60, § 18, p. 106; am. 1982, ch. 313, § 3, p. 787.

**33-413. Complaint and security for costs. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-413, as added by 1982, ch. 60, § 19, p. 106; am. 1982, ch. 313, § 4, p. 787.

**33-414. Complaint — Specific allegations. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-414, as added by 1982, ch. 60, § 20, p. 106.

**33-415. Issuance of summons. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-415, as added by 1982, ch. 60, § 21, p. 106.

**33-416. Procedure in general. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-416, as added by 1982, ch. 60, § 22, p. 106.



**33-417. Voters to testify as to qualifications. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-417, as added by 1982, ch. 60, § 23, p. 106.

**33-418. Liability for costs. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-418, as added by 1982, ch. 60, § 24, p. 106.

**33-419. Form of judgment. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-419, as added by 1982, ch. 60, § 25, p. 106.

**33-420. Determination of tie vote. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-420, as added by 1982, ch. 60, § 26, p. 106.

**33-421. Election declared void. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-421, as added by 1982, ch. 60, § 27, p. 106.

**33-422. Appeal. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-422, as added by 1982, ch. 60, § 28, p. 106.

**33-423. Applicability of penal provisions. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-423, as added by 1984, ch. 46, § 1, p. 75.

### **33-424. Initiating recall proceedings. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

#### **History.**

I.C., § 33-424, as added by 1986, ch. 348, § 1, p. 856; am. 1990, ch. 94, § 2, p. 194.



**33-425 — 33-427. Petition — Where filed — Ballot synopsis —  
Determination by magistrate court — Correction of ballot synopsis.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised I.C., §§ 33-425 to 33-427, as added by 1986, ch. 348, §§ 2 to 4, p. 856, were repealed by S.L. 1990, ch. 94, § 1.

**33-428. Filing petitions — Time limitations. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-428, as added by 1986, ch. 348, § 5, p. 856; am. 1990, ch. 94, § 3, p. 194; am. 1993, ch. 64, § 1, p. 166.

### **33-429. Petition — Form. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

#### **History.**

I.C., § 33-429, as added by 1986, ch. 348, § 6, p. 856; am. 1990, ch. 94, § 4, p. 194; am. 2002, ch. 32, § 13, p. 46.

**33-430. Petition — Size. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-430, as added by 1986, ch. 348, § 7, p. 856.

**33-431. Number of signatures required. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-431, as added by 1986, ch. 348, § 8, p. 856.

**33-432. Canvassing petition for sufficiency of signatures — Notice.  
[Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

**I.C., § 33-432**, as added by 1986, ch. 348, § 9, p. 856; am. 2004, ch. 252, § 1, p. 723.

**33-433. Verification and canvass of signatures — Procedure.  
[Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-433, as added by 1986, ch. 348, § 10, p. 856.

**33-434. Fixing date for recall election — Notice. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-434, as added by 1986, ch. 348, § 11, p. 856.



**33-435. Response to recall petition statement. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-435, as added by 1986, ch. 348, § 12, p. 856; am. 1990, ch. 94, § 5, p. 194.

**33-436. Destruction of insufficient recall petition. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-436, as added by 1986, ch. 348, § 13, p. 856; am. 1990, ch. 94, § 6, p. 194.

**33-437. Invalid names — Record of. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-437, as added by 1986, ch. 348, § 14, p. 856.

**33-438. Conduct of election — Form of ballot. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-438, as added by 1986, ch. 348, § 15, p. 856; am. 1990, ch. 94, § 7, p. 194.

**33-439. Ascertaining the result — When recall effective. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-439, as added by 1986, ch. 348, § 16, p. 856; am. 1990, ch. 94, § 8, p. 194.

**33-440. Enforcement provisions — Mandamus — Appeals. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-440, as added by 1986, ch. 348, § 17, p. 856.

**33-441. Violations by signers. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-441, as added by 1986, ch. 348, § 18, p. 856.

**33-442. Violations — Corrupt practices. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011.

**History.**

I.C., § 33-442, as added by 1986, ch. 348, § 19, p. 856.



**33-443. Limitation of ballot access for multi-term incumbents.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised Init. Measure 1994, No. 2, § 4, p. 1317, was repealed by S.L. 2002, ch. 1, § 1.

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## **CHAPTER 5**

### **DISTRICT TRUSTEES**

#### **Section.**

33-501. Board of trustees.

33-502. Declarations of candidacy for trustees.

33-502A. Declaration of intent for write-in candidates. [Repealed.]

33-502B. Board of trustees — One nomination — No election.

33-502C. Withdrawal of candidacy. [Repealed.]

33-502D. Procedure for correction of ballots when a withdrawal occurs after printing — Notice. [Repealed.]

33-503. Election of trustees — Uniform date.

33-503A. Transition of school trustee terms from three years to four years. [Repealed.]

33-504. Vacancies on boards of trustees.

33-505. Board of trustees, district newly created.

33-506. Organization and government of board of trustees.

33-507. Limitation upon authority of trustees.

33-508. Duties of clerk.

33-509. Duties of the treasurer.

33-509A. Assistant treasurers.

33-510. Annual meetings — Regular meetings — Boards of trustees.

33-511. Maintenance of schools.

33-512. Governance of schools.

33-512A. District curricular materials adoption committees.

33-512B. Suicidal tendencies — Duty to warn.

33-512C. Encouragement of gifted students.

33-513. Professional personnel.

33-513A. Professional personnel contracts for 2012-2013 school year. [Null and void.]

33-514. Issuance of annual contracts — Support programs — Categories of contracts — Optional placement.

33-514A. Issuance of limited contract — Category 1 contract.

33-515. Issuance of renewable contracts.

33-515A. Supplemental contracts.

33-515B. Reduced enrollment — Contract termination and severance stipend. [Null and void.]

33-516. Right to renewable contract when district is divided, consolidated or reorganized.

33-517. Noncertificated personnel.

33-517A. School districts — Noncertificated employees — Group health insurance.

33-518. Employee personnel files.

33-519. Release for religious instruction.

33-520. Policy governing medical inhalers, epinephrine auto-injectors, insulin and blood glucose monitoring supplies.

33-520A. Life-threatening allergies in schools — Guidelines, stock supply of epinephrine auto-injectors and emergency administration.

33-521. Employee severance in consolidated district.

33-522. Financial emergency.

33-522A. Reduction in force defined.

33-523. STEM diploma.

33-524. Biliteracy diploma.

[33-525]. Advance enrollment for military dependents.

**33-501. Board of trustees.** — (1) Each school district shall be governed by a board of trustees. The board of trustees of each elementary school district shall consist of three (3) members, and the board of trustees of each other school district shall consist of five (5) members. Provided, however, that the board of trustees of any district which has had a change in its district boundaries subsequent to June 30, 1973, may consist of no fewer than five (5) nor more than nine (9) members if such provisions are included as part of an approved proposal to redefine and change trustee zones as provided in section 33-313, Idaho Code. The board of trustees of any district that has had a change in its district boundaries because of district consolidation on and after January 1, 2008, shall consist of five (5) members if two (2) districts consolidated or seven (7) members if three (3) or more districts consolidated. Commencing in 2018, a school district trustee shall be elected for a term of four (4) years beginning at twelve o'clock noon on January 1 next succeeding his election.

(2) Each trustee shall at the time of his nomination and election, or appointment, be a school district elector of his district and a resident of the trustee zone from which nominated or appointed. In the event that a vacancy shall be declared as provided in [section 33-504, Idaho Code](#), and the board of trustees is unable to appoint a trustee from the zone vacated after ninety (90) days, the board of trustees may appoint a person at-large from within the boundaries of the school district to serve as the trustee from the zone where the vacancy occurred.

(3) Each trustee shall qualify for and assume office on January 1 next following his election, or, if appointed, at the regular meeting of the board of trustees next following such appointment. At the first meeting after a trustee assumes office, an oath of office shall be administered to the trustee, whether elected, reelected or appointed. Said oath may be administered by the clerk, or by another trustee, of the district, and the records of the district shall show such oath of office to have been taken, and by whom administered and shall be filed with the official records of the district.

**History.**

1963, ch. 13, § 51, p. 27; am. 1973, ch. 125, § 2, p. 236; am. 1980, ch. 32, § 1, p. 56; am. 2008, ch. 351, § 2, p. 969; am. 2009, ch. 57, § 1, p. 160; am. 2009, ch. 341, § 37 p. 993; am. 2018, ch. 164, § 1, p. 322.

## **STATUTORY NOTES**

### **Cross References.**

Child labor law, school trustees to bring complaint under, § 44-1308.

Delinquent children, school trustees to report to district court, §§ 20-510, 20-527.

Junior college districts, cooperation with, § 33-2115.

### **Amendments.**

The 2008 amendment, by ch. 351, added the fourth sentence in the first paragraph.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 57, added the last sentence in the second paragraph.

The 2009 amendment, by ch. 341, rewrote the last sentence in the first paragraph, which formerly read: “Except as otherwise provided by law, a school district trustee shall be elected for a term of three (3) years or until the annual meeting of his district held during the year in which his term expires”; and, in the first sentence in the last paragraph, substituted “assume office on July 1” for “assume office at the annual meeting of his school district.”

The 2018 amendment, by ch. 164, added the subsection designations; in the last sentence of subsection (1), substituted “2018” for “2011” and “January 1” for “July 1”; deleted “and elected” following “from which nominated” in the first sentence in subsection (2); and, in subsection (3), substituted “January 1” for “July 1” in the first sentence, added “At the first meeting after a trustee assumes office” and substituted “the trustee” for “each trustee” in the second sentence, and substituted “another trustee” for “a trustee” in the last sentence.

## **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

## **JUDICIAL DECISIONS**

### **Authority of School Board.**

The building principal had no authority to bind the school board to an “extra duty” employment contract with teachers, since only the board had that authority. *Gilmore v. Bonner County Sch. Dist. No. 82*, 132 Idaho 257, 971 P.2d 323 (1999).

### Decisions Under Prior Law

#### Analysis

Continuity as corporate body.

Indebtedness.

Suits by and against.

### **Continuity as Corporate Body.**

The board was a continuous body or entity; the corporation continued unchanged and had the power to contract; its contracts were contracts of the board and not of its individual members. *Corum v. Common Sch. Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

### **Indebtedness.**

Common school district could incur indebtedness during any year in amount which did not exceed its income and revenue for that year. *Boise City Nat'l Bank v. Independent Sch. Dist. No. 40*, 33 Idaho 26, 189 P. 47 (1920).

### **Suits By and Against.**

Action against board of trustees was, in fact, action against state. *Thomas v. State*, 16 Idaho 81, 100 P. 761 (1909), overruled on other grounds, *Grant Constr. Co. v. Burns*, 92 Idaho 408, 443 P.2d 1005 (1968).

Each school district, whether common or independent, was made a body corporate and was given the power to sue and be sued. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

An unqualified grant of power “to sue and be sued” carried with it all powers that were ordinarily incident to the prosecution and defense of a suit at law or in equity. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

One district could maintain an action against another, where, by either mistake, fraud, or inefficiency of public servants, the one district had received and expended for educational purposes, in its territory, more than its share of the public fund; and the other district by reason thereof had received less than its share. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).



**33-502. Declarations of candidacy for trustees.** — Any person legally qualified to hold the office of school trustee may file a declaration of candidacy for the office, each of which shall bear the name of the candidate, state the term for which declaration of candidacy is made, and bear the signature of not less than five (5) school district electors resident of the trustee zone of which the candidate is resident. The declaration shall be filed with the clerk of the board of trustees of the school district as provided in section 34-1404, Idaho Code.

**History.**

1963, ch. 13, § 52, p. 27; am. 1967, ch. 9, § 1, p. 14; am. 1992, ch. 187, § 3, p. 581; am. 2011, ch. 11, § 5, p. 24.

**STATUTORY NOTES**

**Amendments.**

The 2011 amendment, by ch. 11, substituted “as provided in [section 34-1404, Idaho Code](#)” for “not later than 5:00 p.m. on the fifth Friday preceding the day of election of trustees” at the end of the last sentence.

**Effective Dates.**

Section 4 of S.L. 1992, ch. 187 declared an emergency. Approved April 8, 1992.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

**33-502A. Declaration of intent for write-in candidates. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 38, effective January 1, 2011.

**History.**

I.C., § 33-502A, as added by 1988, ch. 69, § 1, p. 100; am. 2000, ch. 204, § 1, p. 513.

**33-502B. Board of trustees — One nomination — No election.** — In any election for trustees, if, after the expiration of the date for filing written nominations for the office of trustee, it appears that only one (1) qualified candidate has been nominated for a position to be filled or if only one (1) candidate has filed a write-in declaration of intent as provided by section 34-1407, Idaho Code, and has provided to the district's board clerk the signatures of five (5) electors of the candidate's specific zone, then no election shall be held for that position. The board of trustees or the school district clerk, with the written permission of the board, shall declare such candidate elected as a trustee. The school district clerk shall immediately prepare and deliver to the person a certificate of election signed by him and bearing the seal of the district. The procedure set forth in this section shall not apply to any other school district election.

#### **History.**

**I.C., § 33-502B**, as added by 1990, ch. 332, § 1, p. 910; am. 1993, ch. 51, § 1, p. 132; am. 1994, ch. 160, § 1, p. 367; am. 2004, ch. 26, § 1, p. 43; am. 2009, ch. 341, § 39, p. 993; am. 2016, ch. 261, § 1, p. 681.

### **STATUTORY NOTES**

#### **Amendments.**

The 2009 amendment, by ch. 341, in the first sentence, updated the section reference, and deleted “within thirteen (13) days before the scheduled date of the election” preceding “declare such candidate.”

The 2016 amendment, by ch. 261, divided the existing provisions of the section into three sentences and inserted “and has provided to the district's board clerk the signatures of five (5) electors of the candidate's specific zone on a paper nominating petition as provided in **section 34-1404, Idaho Code**” at the end of the first sentence.

#### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**33-502C. Withdrawal of candidacy. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 38, effective January 1, 2011.

**History.**

I.C., § 33-502C, as added by 1994, ch. 164, § 1, p. 372.

**33-502D. Procedure for correction of ballots when a withdrawal occurs after printing — Notice. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 38, effective January 1, 2011.

**History.**

**I.C., § 33-502D**, as added by 1994, ch. 164, § 2, p. 372.

**33-503. Election of trustees — Uniform date.** — (1) The election of school district trustees including those in charter districts shall be on the Tuesday following the first Monday in November in odd-numbered years. Notice and conduct of the election, and the canvassing of the returns, shall be as provided in chapter 14, title 34, Idaho Code. In each trustee zone, the person receiving the greatest number of votes cast within his zone shall be declared by the board of trustees as the trustee elected from that person's zone.

(2) If any two (2) or more persons residing in the same trustee zone have an equal number of votes and a greater number than any other nominee residing in that zone, then the board of trustees shall determine the winner by a toss of a coin.

(3) Incumbent trustees as of the effective date of this act shall have their terms expire on January 1 following the November election of their successors.

### **History.**

1963, ch. 13, § 53, p. 27; am. 1973, ch. 97, § 1, p. 166; am. 1975, ch. 181, § 1, p. 497; am. 2009, ch. 341, § 40, p. 993; am. 2015, ch. 248, § 1, p. 1044; am. 2018, ch. 164, § 2, p. 322; am. 2019, ch. 288, § 20, p. 830.

## **STATUTORY NOTES**

### **Amendments.**

The 2009 amendment, by ch. 341, in the first paragraph, in the first sentence, added “in odd-numbered years,” and in the second sentence, substituted “chapter 14, title 34, Idaho Code” for “[sections 33-401-33-406, Idaho Code.](#)”

The 2015 amendment, by ch. 248, designated the existing provisions of the section as subsections (1) and (2) and added subsection (3).

The 2018 amendment, by ch. 164, in subsection (1), substituted “Tuesday following the first Monday in November” for “third Tuesday in May” in the first sentence and inserted “person’s” near the end of the last sentence; in

subsection (2), inserted “residing in the same trustee zone”, deleted “in any trustee zone” following “number of votes” and substituted “residing in that zone, then the board” for “in that zone, the board”; and added subsection (4).

The 2019 amendment, by ch. 288, deleted former subsection (3), which read: “The provisions of [sections 67-6601 through 67-6616, Idaho Code](#), and [sections 67-6623 through 67-6630, Idaho Code](#), shall apply to all elections of school district trustees, except for elections of trustees in a school district that has fewer than five hundred (500) students. Provided however, the county clerk shall stand in place of the secretary of state and the county prosecutor shall stand in place of the attorney general. Any report or filing required to be filed by or for a candidate by such Idaho Code sections shall be filed with the county clerk of the county wherein the district lies or, in the case of a joint district, with the county clerk of the home county as designated pursuant to [section 33-304, Idaho Code](#)”, and redesignated former subsection (4) as present subsection (3).

### **Compiler’s Notes.**

The phrase “the effective date of this act” in subsection (3) refers to the effective date of S.L. 2018, Chapter 164, which was effective July 1, 2018.

### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 26 of S.L. 2019, ch. 288 provided that the act should take effect on and after January 1, 2020.

**33-503A. Transition of school trustee terms from three years to four years. [Repealed.]**

Repealed by S.L. 2015, ch. 12, § 1, effective July 1, 2015.

**History.**

**I.C., § 33-503A**, as added by 2009, ch. 341, § 41, p. 993; am. 2010, ch. 185, § 2, p. 382; am. 2011, ch. 11, § 6, p. 24.



**33-504. Vacancies on boards of trustees.** — A vacancy shall be declared by the board of trustees when any nominee has been elected but has failed to qualify for office, or within thirty (30) days of when any trustee shall (a) die; (b) resign as trustee; (c) remove himself from his trustee zone of residence; (d) no longer be a resident or school district elector of the district; (e) refuse to serve as trustee; (f) without excuse acceptable to the board of trustees, fail to attend four (4) consecutive regular meetings of the board; or (g) be recalled and discharged from office as provided in law.

Such declaration of vacancy shall be made at any regular or special meeting of the board of trustees, at which any of the above-mentioned conditions are determined to exist.

The board of trustees shall appoint to such vacancy a person qualified to serve as trustee of the school district provided there remains in membership on the board of trustees a majority of the membership thereof, and the board shall notify the state superintendent of public instruction of the appointment. Such appointment shall be made within ninety (90) days of the declaration of vacancy. After ninety (90) days, if the board of trustees is unable to appoint a trustee from the zone vacated, the board of trustees may appoint a person at-large from within the boundaries of the school district to serve as the trustee from the zone where the vacancy occurred. Otherwise, after one hundred twenty (120) days from the declaration of vacancy, appointments shall be made by the board of county commissioners of the county in which the district is situate, or of the home county if the district be a joint district.

Any person appointed as herein provided shall serve for the balance of the unexpired term of the office which was declared vacant and filled by appointment.

### **History.**

1963, ch. 13, § 54, p. 27; am. 1975, ch. 181, § 2, p. 497; am. 1984, ch. 94, § 2, p. 218; am. 1986, ch. 348, § 20, p. 856; am. 1987, ch. 141, § 1, p. 282; am. 2009, ch. 57, § 2, p. 160; am. 2009, ch. 341, § 42, p. 993.

## STATUTORY NOTES

### **Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 57, in the third paragraph, added the third sentence and inserted “after one hundred twenty (120) days from the declaration of vacancy” in the last sentence.

The 2009 amendment, by ch. 341, at the end of the first paragraph, substituted “provided in law” for “provided in [section 33-439, Idaho Code](#)”; rewrote the last paragraph, which formerly read: “Any person appointed as herein provided shall serve until the annual meeting of school district trustees next following such appointment. At the annual election a trustee shall be elected to complete the unexpired term of the office which was declared vacant and filled by appointment”; and deleted the former last paragraph, which read: “The elected trustee shall assume office at the annual meeting of the school district next following the election.”

### **Effective Dates.**

Section 3 of S.L. 1975, ch. 181 declared an emergency. Approved March 21, 1975.

Section 3 of S.L. 1984, ch. 94 declared an emergency. Approved March 28, 1984.

Section 161 of S.L. 2009, ch. 341, as amended by S.L. 2010, ch. 185, § 16 provided that the act should take effect on and after January 1, 2010.

**33-505. Board of trustees, district newly created.** — (1) Within ten (10) days after the entry of any order creating a new school district by the consolidation of districts or parts thereof, the trustees of all school districts involved in the consolidation shall meet at the call of the state superintendent of public instruction or his designee and, from their number, shall select a board of trustees of the new district representing each of the merged districts in an equal number to serve as follows: if two (2) districts consolidated, one (1) member representing the board of trustees of each district shall serve until the annual election of trustees next following; one (1) member representing the board of trustees of each district shall serve until the annual election the following year; and one (1) member appointed by the other four (4) members shall serve until the annual election in the year after that. If three (3) or more districts consolidated, three (3) members shall serve until the annual election of trustees next following; three (3) members shall serve until the annual election the following year; and one (1) member appointed by the other six (6) members shall serve until the annual election in the year after that. If the number of merged districts is greater than three (3), the superintendent of public instruction shall appoint as equally as possible from trustees of the previous districts so that each district, if possible, has representation on the consolidated district's board of trustees. The superintendent shall stagger the terms of his appointments so that an equal number of appointees' terms expire annually and those trustees shall sit for election. Thereafter, all trustees who are elected shall serve terms as provided in section 33-501, Idaho Code, for a board of trustees of a school district. The board of trustees shall report the names of said trustees to the state board of education. The board of trustees of the newly consolidated school district shall expeditiously redraw the trustee zones pursuant to section 33-313, Idaho Code.

(2) The state board of education, at its first meeting next following receipt of notice of the creation of new school districts by the division of a district, shall appoint a board of trustees for each such new district, to serve until January 1 following the next election for school district trustees.

(3) Boards of trustees selected or appointed as in this section provided shall forthwith meet and organize as provided in [section 33-506, Idaho](#)

**Code**, and thereupon the board of trustees of any district, the whole of which has been incorporated within the new district, or which was divided as the case may be, shall be dissolved and its powers and duties shall cease. Prior to the notice of annual election of trustees next following, the board of trustees of each school district created by consolidation or by division of districts shall determine by lot or by agreement from which of the trustee zones the trustees therefor shall be elected. Thereafter each trustee shall be elected for a term of four (4) years.

### **History.**

1963, ch. 13, § 55, p. 27; am. 2008, ch. 351, § 3, p. 970; am. 2009, ch. 341, § 43, p. 993; am. 2018, ch. 164, § 3, p. 322.

## **STATUTORY NOTES**

### **Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

The 2008 amendment, by ch. 351, rewrote the first paragraph, which formerly read: “Within ten (10) days after the entry of any order creating a new school district by the consolidation of districts or parts thereof, the trustees of all school districts involved in the consolidation shall meet at the call of the state board of education and, from their number or from other qualified school district electors of the district, shall select a board of trustees of the new district to serve until the annual election of trustees next following; and shall report the names of said trustees to the state board of education.”

The 2009 amendment, by ch. 341, in the second paragraph, substituted “to serve until July 1 next following” for “to serve until the annual election of school district trustees next following”; and, in the last paragraph, in the second sentence, inserted “from” and deleted “for a term of one (1) year; which for a term of two (2) years, and which for a term of three (3) years” from the end, and, in the last sentence, substituted “four (4) years” for “three (3) years.”

The 2018 amendment, by ch. 164, added the subsection designations and substituted “January 1 following the next election for school district trustees” for “July 1 next following” at the end of subsection (2).

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**33-506. Organization and government of board of trustees.** — (1) Each board of school district trustees shall organize at its first regular meeting in January and elect a chairman, a vice chairman, a clerk and a treasurer. The clerk and the treasurer may be members of the board of trustees; or, in the discretion of the board, either or both may be selected from among competent and responsible persons outside the membership of the board. The board in its discretion may allow compensation for the clerk, and for the treasurer, if other than the county treasurer.

(2) Each member of the board not otherwise compensated by public moneys shall be compensated for actual expenses incurred for travel to, from, and attending meetings of the board. Such compensation shall be paid from the district school funds.

(3) It shall be the duty of each member of the board of trustees to attend all meetings, both regular and special; and the board shall have the following powers and duties:

(a) To make bylaws, rules and regulations for its government and that of the district, consistent with the laws of the state of Idaho and the rules and regulations of the state board of education;

(b) To call special meetings or elections for such purpose as may be necessary for the proper conduct and management of the school or schools of the district;

(c) To employ an attorney or attorneys when deemed for the best interests of the district, or for the purpose of defending the district against any suit or for bringing action deemed necessary to be commenced by the board.

### **History.**

1963, ch. 13, § 56, p. 27; am. 1975, ch. 82, § 1, p. 167; am. 1978, ch. 103, § 1, p. 210; am. 1988, ch. 77, § 1, p. 132; am. 2018, ch. 164, § 4, p. 322; am. 2019, ch. 38, § 1, p. 106.

## **STATUTORY NOTES**

### **Amendments.**

The 2018 amendment, by ch. 164, added the subsection designations, redesignating former paragraphs 1. through 3. as present paragraphs (3)(a) through (3)(c), and substituted “first regular meeting after the January 1 directly following an election” for “annual meeting” in subsection (1).

The 2019 amendment, by ch. 38, substituted “meeting in January and elect a chairman, a vice chairman” for “meeting after the January 1 directly following an election and elect a chairman, a vice-chairman” near the end of the first sentence in subsection (1).

## **JUDICIAL DECISIONS**

### **Analysis**

**Adoption of rules and regulations.**

**Regulation of appearance.**

### **Adoption of Rules and Regulations.**

In a case involving the discharge of a teacher for paddling students who were unable to work blackboard problems, the trial court erred in estopping the board of trustees from asserting the validity of its teacher’s handbook on the erroneous assumption that this section required annual adoption of rules and regulations which would be incorporated in the handbook, since the section does not require annual exercise of its authority. *Kolp v. Board of Trustees*, 102 Idaho 320, 629 P.2d 1153 (1981).

### **Regulation of Appearance.**

A regulation requiring that students in a high school keep their hair length “off the eyes, off the ear, and off the collar” was held unconstitutional, when the school authorities failed to show that there was any substantial health, safety, academic or disciplinary problem created by the wearing of long hair. *Murphy v. Pocatello School Dist. No. 25*, 94 Idaho 32, 480 P.2d 878 (1971).

**33-507. Limitation upon authority of trustees.** — (1) It shall be unlawful for any trustee to have pecuniary interest, directly or indirectly, in any contract or other transaction pertaining to the maintenance or conduct of the school district or to accept any reward or compensation for services rendered as a trustee except as may be otherwise provided in this section. The board of trustees of a school district may accept and award contracts involving the school district to businesses in which a trustee or a person related to him by blood or marriage within the second degree has a direct or indirect interest provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of a school district for deposit in any bank or trust company, or the lending of money by any bank or trust company to any school district, shall not be deemed to be a contract pertaining to the maintenance or conduct of a school district within the meaning of this section; nor shall the payment by any school district board of trustees of compensation to any bank or trust company, for services rendered in the transaction of any banking business with such district board of trustees, be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(2) It shall be unlawful for the board of trustees of any class of school district to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract requires or will require the payment or delivery of any school district funds, money or property to such spouse, except as provided in subsection (3) of this section or in section 18-1361 or 18-1361A, Idaho Code.

(3) No spouse of any trustee may be employed by a school district with a fall student enrollment population of greater than one thousand two hundred (1,200) in the prior school year. For school districts with a fall student enrollment population of one thousand two hundred (1,200) or less in the prior school year and for schools funded pursuant to the provisions of [section 33-1003\(2\), Idaho Code](#), such spouse may be employed in a nonadministrative position for a school year if each of the following conditions has been met: (a) The position has been listed as open for



application on the school district website or in a local newspaper, whichever is consistent with the district's current practice, and the position shall be listed for at least sixty (60) days, unless the opening occurred during the school year, in which case the position shall be so listed for at least fifteen (15) days. If the position is listed in a newspaper, the listing shall be made in a manner consistent with the provisions of [section 60-106, Idaho Code](#); (b) No applications were received that met the minimum certification, endorsement, education or experience requirements of the position other than such spouse; (c) The trustee abstained from voting in the employment of the spouse and was absent from the meeting while such employment was being considered and determined.

The school district or school may employ such spouse for further school years, provided that the conditions contained in this subsection are met for each school year in which such spouse is employed. The trustee shall abstain from voting in any decisions affecting the compensation, benefits, individual performance evaluation or disciplinary action related to the spouse and shall be absent from the meeting while such issues are being considered and determined. Such limitation shall include, but not be limited to: any matters relating to negotiations regarding compensation and benefits; discussion and negotiation with district benefits providers; and any matter relating to the spouse and letters of reprimand, direction, probation or termination. Such limitations shall not prohibit the trustee spouse from participating in deliberation and voting upon the district's annual fiscal budget or annual audit report. Any spouse of a trustee employed as a certificated employee pursuant to this subsection shall be employed under a category 1 contract pursuant to [section 33-514A, Idaho Code](#).

(4) When any relative of any trustee or relative of the spouse of a trustee related by affinity or consanguinity within the second degree is considered for employment in a school district, such trustee shall abstain from voting in the election of such relative and shall be absent from the meeting while such employment is being considered and determined.

### **History.**

1963, ch. 13, § 57, p. 27; am. 1977, ch. 23, § 1, p. 45; am. 1994, ch. 300, § 1, p. 947; am. 1996, ch. 193, § 3, p. 601; am. 2014, ch. 252, § 1, p. 634.

## STATUTORY NOTES

### **Cross References.**

Sales of merchandise to pupils limited, § 33-1221.

### **Amendments.**

The 2014 amendment, by ch. 252, added the subsection designations and inserted subsection (3).

### **Compiler's Notes.**

This section was to be repealed effective July 1, 2018, pursuant to S.L. 2014, ch. 252, § 4, at which time a new § 33-507 was to be enacted. However, S.L. 2018, ch. 197, §§ 1, 4 and 7 repealed S.L. 2014, ch. 252, §§ 4, 7 and 10, repealing the repeal and the reenactment of the new section, effective July 1, 2018.

### **Effective Dates.**

Section 4 of S.L. 1996, ch. 193 declared an emergency. Approved March 12, 1996.

## JUDICIAL DECISIONS

### Decisions Under Prior Law

#### Analysis

Nepotism.

Penal statute.

Validity of election.

Void contracts.

### **Nepotism.**

School trustee was pecuniarily interested in contract whereby his wife was employed by board of trustees to teach the school, and such contract was null and void. *Nuckols v. Lyle*, 8 Idaho 589, 70 P. 401 (1902).

### **Penal Statute.**

Prior statute was held to be in its nature penal and should not be extended by construction beyond its natural meaning. *Independent Sch. Dist. No. 5 v. Collins*, 15 Idaho 535, 98 P. 857 (1908).

The former section was founded in public policy and was a salutary one to prevent risk of abuses in the public service. *Independent Sch. Dist. No. 5 v. Collins*, 15 Idaho 535, 98 P. 857 (1908).

### **Validity of Election.**

Election which approved the transfer of the powers and duties of a county board of education to the board of trustees of the school district was not authorized by statute in that the territory supervised by the county board of education was not limited to the territory supervised by the board of trustees and not all the qualified voters were permitted to vote; therefore, such election was null and void. *Board of Trustees v. Board of County Comm'rs*, 82 Idaho 183, 350 P.2d 743 (1960).

### **Void Contracts.**

Only such contracts made by board as some member or members thereof were pecuniarily interested in, directly or indirectly, were void. *School Dist. No. 15 v. Wood*, 32 Idaho 484, 185 P. 300 (1919).

Where action was brought to recover money paid on a void contract, complaint had to allege that such contract was made with defendant during time that he was member of board of trustees. *Independent Sch. Dist. No. 5 v. Collins*, 15 Idaho 535, 98 P. 857 (1908).

Money paid by municipal corporations upon a void contract may be recovered. Rule that neither party to transaction would be permitted to take advantage of its invalidity, while retaining its benefits, applied only to voidable contracts and not to contracts of municipal corporation that were absolutely void. *Independent Sch. Dist. No. 5 v. Collins*, 15 Idaho 535, 98 P. 857 (1908).

## **OPINIONS OF ATTORNEY GENERAL**

### **Absolute Prohibition.**

The prohibition of this section against a member of the board of trustees of a school district from receiving a personal pecuniary benefit from a

contractual relationship between the school district and the teachers' association is absolute and allows no leeway or exceptions to the prohibition of pecuniary interest. OAG 93-10.

**Precedence Over General Law.**

The specific provisions of this section which prohibit a member of the board of trustees of a school district from having a pecuniary interest in any contract pertaining to the maintenance or conduct of the school district takes precedence over the general conflict of interest law found in § 59-704A. OAG 93-10.

**33-508. Duties of clerk.** — The clerk of the board of trustees shall have such duties as shall be prescribed by the board. He shall attend all meetings of the board of trustees, shall keep the record of the proceedings, and shall enter in said record all matters required by law, or by the board, so to be entered; and said record shall be open to inspection by any person, at all reasonable times.

When the clerk does not attend a meeting of the board of trustees, the board shall appoint some person who, as temporary clerk, shall keep the record of the proceedings of the board and certify the same to the clerk, to be entered by him.

Whenever in the judgment of the board of trustees it is deemed prudent so to do, the clerk may be placed under a fidelity bond, in the manner of section 33-509, in such amount as the board of trustees shall determine.

**History.**

1963, ch. 13, § 58, p. 27.

**33-509. Duties of the treasurer.** — The treasurer elected by the board of trustees of a school district shall have such duties as the board may prescribe. The treasurer shall be placed under fidelity bond issued by a surety company authorized to do business in the state of Idaho, in such amount as the board of trustees may from time to time determine, or under personal bond equal to twice such determined amount with at least two (2) sureties who each shall qualify as in the case of sureties on the bonds of county officers.

The county treasurer of the home county of any elementary school district with less than six (6) teachers within the district shall serve as treasurer of such district, if requested to do so by the school district board of trustees.

The treasurer shall account for the deposit of all moneys of the district in accordance with the provisions of the public depository law, chapter 1, title 57, Idaho Code.

### **History.**

1963, ch. 13, § 59, p. 27; am. 1978, ch. 103, § 2, p. 210; am. 1988, ch. 70, § 1, p. 101; am. 1988, ch. 77, § 2, p. 132.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 1988 acts which appear to be compatible and have been compiled together.

The 1988 amendment by ch. 70, § 1, in the third paragraph, inserted “account for the,” substituted “of all moneys of” for “the moneys of,” substituted “chapter 1, title 57, Idaho Code” for “as now appearing or as may be amended,” and made minor changes in punctuation.

The 1988 amendment by ch. 77, § 2, in the second sentence of the first paragraph, substituted “The Treasurer” for “He”; and in the second paragraph, added “if requested to do so by the school district board of trustees.”

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law**

#### **Analysis**

Designation of depository.

Estoppel.

Recovery of misappropriated funds.

#### **Designation of Depository.**

Power of board of trustees of independent school district to designate depository of district funds was necessarily implied from grant of express powers. *Pocatello Independent School Dist. No. 1 v. Fargo*, 38 Idaho 563, 223 P. 232 (1924).

#### **Estoppel.**

Any acts of negligence, misconduct, mistake, or omissions on part of officers of school district, in paying out funds of district, could not estop district from maintaining action to recover back money wrongfully taken. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

#### **Recovery of Misappropriated Funds.**

School district officers acted in a governmental capacity and they could not be estopped by any negligence, misconduct, mistake or omission from maintaining an action to recover money wrongfully taken and no laches could be attributed to the district acting in such capacity. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

**33-509A. Assistant treasurers.** — A board of trustees of a school district may elect one (1) or more assistant treasurers who shall have such duties as the board of trustees may prescribe. Assistant treasurers shall be subject to the control, supervision and direction of the treasurer of the district. An assistant treasurer may perform the statutory duties prescribed by law for the treasurer to the extent authorized by the board of trustees.

**History.**

I.C., § 33-509A, as added by 1990, ch. 198, § 1, p. 443.



**33-510. Annual meetings — Regular meetings — Boards of trustees.**

— (1) The annual meeting of each school district shall be on the date of its regular January meeting in each year. Notice of the annual meeting of elementary school districts shall be given as provided in section 33-402, Idaho Code, but one (1) publication shall suffice.

(2) Regular meetings of each board of school district trustees shall be held monthly, on a uniform day of a uniform week as determined at the annual meeting. Special meetings may be called by the chairman or by any two (2) members of the board and held at any time. If the time and place of special meetings shall not have been determined at a meeting of the board with all members being present, then notice of the time and place shall be given to each member and announced by written notice conspicuously posted at the school district office and at least two (2) or more public buildings within the school district not less than twenty-four (24) hours before such special meeting is to be convened.

(3) A quorum for the transaction of business of the board of trustees shall consist of a majority of the members of the board. Unless otherwise provided by law, all questions shall be determined by a majority of the vote cast. The chairman of the board may vote in all cases.

(4) All meetings shall conform to the provisions of chapter 2, title 74, Idaho Code.

**History.**

1963, ch. 13, § 60, p. 27; am. 1973, ch. 62, § 1, p. 102; am. 1976, ch. 66, § 1, p. 233; am. 1977, ch. 51, § 1, p. 101; am. 1977, ch. 52, § 1, p. 102; am. 1978, ch. 137, § 1, p. 312; am. 2011, ch. 151, § 16, p. 414; am. 2015, ch. 141, § 61, p. 379; am. 2018, ch. 164, § 5, p. 322.

**STATUTORY NOTES**

**Cross References.**

Meetings open to public, § 74-203.

**Amendments.**

The 2011 amendment, by ch. 151, updated the section reference in the first paragraph.

The 2015 amendment, by ch. 141, substituted “chapter 2, title 74” for “sections 67-2340 through 67-2345” in the last paragraph.

The 2018 amendment, by ch. 164, added the subsection designations and substituted “January” for “July” in the first sentence of subsection (1).

## **JUDICIAL DECISIONS**

**Cited in:** [Johnson v. Bonner County Sch. Dist., 126 Idaho 490, 887 P.2d 35 \(1994\).](#)

### Decisions Under Prior Law

#### Analysis

[Contracts entered into prior to meeting.](#)

[Evidence.](#)

[Functions of meeting.](#)

[Meetings.](#)

[Notice of meeting.](#)

[Organization of meeting prevented.](#)

[Postponed meetings.](#)

[Quorum.](#)

[School district election as binding on trustees.](#)

[Statutes directory.](#)

[Void tax levy.](#)

### **[Contracts Entered into Prior to Meeting.](#)**

Contracts of trustees of common school district which were entered into with school teachers prior to annual school meeting were made subject to law, which impliedly became part of contract, giving electors at annual meeting right to modify contract as to amount of wages and length of

school year. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

Where a written contract of employment was entered into by the board of trustees of a school district with a school teacher prior to the annual school meeting at which a change in the personnel of the board occurred, a school teacher could recover thereon, although the contract was to be performed subsequent to the annual meeting, and a contract of employment of a school teacher agreed to at a regular meeting of the board of trustees, but not reduced to writing and executed until after adjournment, was valid and enabled the school teacher to recover thereon. *Corum v. Common Sch. Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

### **Evidence.**

Defendant school board was entitled to show that no executive or closed session took place in suit brought by teacher for damages resulting from her discharge by the board for breach of contract, to have evidence of what actually took place admitted, and to prove that no executive or closed session was held contrary to the former statutory provision. *Murray v. Joint Class B. School Dist. No. 181*, 80 Idaho 84, 326 P.2d 67 (1958), overruled on other grounds, *Dodson v. Stroschien*, 83 Idaho 454, 364 P.2d 881 (1961).

### **Functions of Meeting.**

Annual school meeting could exercise functions of deliberative assembly at which qualified electors of common school districts could discuss and dispose of general questions pertaining to school and its interests. *Petrie v. Common Sch. Dist. No. 5*, 44 Idaho 92, 255 P. 318 (1927).

### **Meetings.**

One member of the board could not defeat or obstruct the transaction of the business of the district by failing to call or attend its regular meetings. *Corum v. Common Sch. Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

### **Notice of Meeting.**

As the former statute did not entitle the chairman of the board to written notice of a regular meeting, his failure to attend a meeting at which two trustees were present could not affect the validity of business transacted at

such meeting. *Corum v. Common Sch. Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

### **Organization of Meeting Prevented.**

Where trustees prevented organization of annual school meeting of common school district as a deliberative assembly, contract for construction of addition to schoolhouse to be paid for by special tax levied pursuant to such meeting was void. *Petrie v. Common Sch. Dist. No. 5*, 44 Idaho 92, 255 P. 318 (1927).

### **Postponed Meetings.**

Meeting held on evening following night of regular meeting complied with the former section where members attending regular meeting were notified that meeting would be held on next night and absent member was personally notified since meeting, as held, constituted a postponed regular meeting with authority to transact business. *Keyes v. Class "B" School Dist. No. 421*, 74 Idaho 314, 261 P.2d 811 (1953).

### **Quorum.**

Meeting of two of three members of board of trustees of school district at the home of one on the date fixed by statute for the holding of a regular meeting, at which they agreed to hire the plaintiff as a teacher for that district, although not attended by the chairman, was a legal meeting of the board, giving validity to the contract subsequently entered into with the plaintiff. *Corum v. Common Sch. Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

### **School District Election as Binding on Trustees.**

Under former statutes which required electors of school district to vote tax levy for maintenance of school upon trustees' submission of budget setting forth expenditures of preceding year and requirements for ensuing year, the action of the electors of a common school district in voting on annual budget specifying amount to be used for employment of teachers and total amount to be raised by tax levy for ensuing year was binding on trustees with respect to teachers' contracts previously executed. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

### **Statutes Directory.**

Election having been held, statutes regulatory thereof would be held to be directory unless it appeared that failure to give proper notice, or failure to comply with some other provision, had affected result of election. *King v. Independent Sch. Dist. No. 37*, 46 Idaho 800, 272 P. 507 (1928).

### **Void Tax Levy.**

Where trustees prevented organization of annual meeting of common school district as a deliberative assembly, an attempted levy of special tax in pursuance to such meeting was not authorized. *Petrie v. Common Sch. Dist. No. 5*, 44 Idaho 92, 255 P. 318 (1927).

**33-511. Maintenance of schools.** — The board of trustees of each school district shall have the following powers and duties:

(1) Each elementary school district shall maintain at least one (1) elementary school, and each other school district shall maintain at least one (1) elementary school and one (1) secondary school;

(2) To employ necessary help and labor to maintain and operate the schools of the district;

(3) To discontinue any school within the district whenever it shall find such discontinuance to be in the best interests of the district and of the pupils therein. For the purposes of this section, discontinuing a school shall mean no longer maintaining a school of any kind, at the same location, except in the case of secondary units as herein provided.

(a) When any school proposed to be discontinued is one which was operated and maintained by a former district now wholly incorporated within the boundaries of the district operated by said board of trustees, and, immediately following reorganization and the dissolution of said former district, such school has been continuously operated and maintained at the same location by the presently organized district, the following procedures shall apply before discontinuing a school:

(i) The board of trustees must first give notice of such proposal not later than the first day of July next preceding the date of the proposed discontinuance. Such notice shall be posted, and published once, in the manner provided in [section 33-402, Idaho Code](#), and shall identify the school proposed to be discontinued.

(ii) If, not later than the first day of August following the posting and publishing of the notice of discontinuance, five (5) or more qualified school district electors residing within the school district shall petition the board of trustees for an election to be held within the school district on the question of discontinuance of that school, the board of trustees shall forthwith order an election to be held within fourteen (14) days of the date of said order and shall give notice of the election.

(iii) Notice of such election shall be posted at or near the main door of the school proposed to be discontinued and at or near the main door of the administrative offices of the school district and shall also be published in one (1) issue of a newspaper printed in the county in which is situate the school proposed to be discontinued. The notice shall state the date the election is to be held, the place of voting, and the hours between which the polls shall be open. In addition, the notice of election shall describe the area of the particular attendance unit of the school district and shall identify the school proposed to be discontinued; and it shall state that only qualified school district electors residing within the school district may vote on the question of discontinuing the school.

(iv) The election shall be held within the school district and there shall be submitted to the electors a ballot containing the proposal:

1. For discontinuing the school located at . . . . ,

2. Against discontinuing the school located at . . . . .

(v) If a majority of the qualified electors, as defined in this section and voting in the election, shall vote against discontinuing that school, then said school shall not be discontinued; and no proposal to discontinue the same school shall be made by the board of trustees of the district within nine (9) months after the date of the election.

(vi) If a secondary unit which the trustees of a district propose to close is more than thirty (30) miles by all-weather road from the attendance unit to which it is proposed to transfer such students, then, notwithstanding other provisions of this section, five (5) electors residing within the attendance area of the unit proposed to be closed may, as provided by this section, petition the board of trustees requesting an election to determine whether or not such attendance unit, or any portion of it, shall be closed. The board shall forthwith call and hold an election as herein provided. However, for the purpose of this section relating to the secondary attendance unit thirty (30) miles or more distant from another secondary attendance unit, only the patrons resident in this attendance area shall be eligible to vote, except for attendance units, or portions of them, created after January 1, 2002, in which case qualified school district electors throughout the school

district shall be eligible to vote. The election shall be deemed passed and the unit shall not be closed if a majority of those voting in the election vote in favor of retaining the attendance unit.

(b) The provisions of paragraph (a) of this subsection shall not apply when:

(i) The administrator of the division of building safety has determined that the school constitutes an imminent public safety hazard and has issued an order or notice requiring the school district superintendent, principal, board member or other person in charge to cause all persons, except those necessary to eliminate the condition, to be withdrawn from, and to be restrained from entering the school, pursuant to [section 39-8008, Idaho Code](#); and

(ii) The school district board of trustees have voted at a public meeting to discontinue the school.

### **History.**

1963, ch. 13, § 61, p. 27; am. 1967, ch. 366, § 1, p. 1057; am. 1973, ch. 5, § 1, p. 10; am. 2000, ch. 424, § 1, p. 1374; am. 2002, ch. 317, § 1, p. 898; am. 2011, ch. 125, § 1, p. 351; am. 2011, ch. 151, § 17, p. 414.

## **STATUTORY NOTES**

### **Cross References.**

Administrator of division of building safety, § 54-2607.

Transfer of real or personal property to another unit of government, §§ 67-2322 to 67-2325.

### **Amendments.**

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 125, divided and designated the existing provisions in subsection (3) as the introductory paragraph and paragraph (3)(a) and added paragraph (3)(b).

The 2011 amendment, by ch. 151, updated the section reference in paragraph (3)(a)(i).



## **Effective Dates.**

Section of S.L. 2000, ch. 424 declared an emergency. Approved April 17, 2000.

Section 2 of S.L. 2002, ch. 317 declared an emergency retroactively to January 1, 2002 and approved March 26, 2002.

## **JUDICIAL DECISIONS**

### **Removal of Grades.**

Where board of trustees moved the high school grades of a school elsewhere and retained the seventh and eighth grades, the school was not discontinued and notice was not required as provided in this section. [Lang v. Board of Trustees, 93 Idaho 79, 455 P.2d 856 \(1969\).](#)

**Cited in:** [Bowler v. Board of Trustees, 101 Idaho 537, 617 P.2d 841 \(1980\).](#)

### Decisions Under Prior Law

#### Analysis

[Approval of electors.](#)

[Closing of school.](#)

[Constitutionality.](#)

[Costs of suit.](#)

[Holding elections.](#)

[Mandamus.](#)

[Procedure.](#)

[Removal of grades.](#)

### **[Approval of Electors.](#)**

The trustees of an independent or joint independent school district had power to purchase and acquire sites for school buildings of any and all types and erect buildings thereon and change the attendance of pupils by grades or classes from one building to another and sell or otherwise dispose

of such sites and buildings without an election by the qualified electors of the district. [Hovenden v. Class A School Dist. No. 411, 71 Idaho 4, 224 P.2d 1080 \(1950\).](#)

### **Closing of School.**

Notice of proposed closing of school was required. [Wellard v. Marcum, 82 Idaho 232, 351 P.2d 482 \(1960\).](#)

In order to establish capriciousness or arbitrariness on part of board in closing school, there had to be more than conjecture or assumption and it had to be clearly shown; it being presumed that public boards do not abuse their discretion or act from improper motives. [Wellard v. Marcum, 82 Idaho 232, 351 P.2d 482 \(1960\).](#)

Where elementary school at one locality was discontinued and pupils transferred to other schools, and junior high schools were discontinued in other localities, and the abandoned elementary school was made into a junior high school and pupils from other localities transported to that school, there was no discontinuance of an attendance unit which would require an election. [Cameron v. Lakeland Class A Sch. Dist. No. 272, 82 Idaho 375, 353 P.2d 652 \(1960\).](#)

### **Constitutionality.**

Former section, as amended in 1949 and 1951, providing for discontinuance of attendance units within reorganized districts, either by vote of the trustees, or by vote of the electors, did not violate Idaho [Const., Art. VII, § 5](#), since in either event the tax would be uniform within the district, even though there might be different costs in the operation of the different school units. [Robbins v. Joint Class A. Sch. District. No. 331, 72 Idaho 500, 244 P.2d 1104 \(1952\).](#)

Former section, as amended in 1949 and 1951, providing for discontinuance of attendance units within reorganized districts did not violate Idaho [Const., Art. IX, § 1](#) guaranteeing a system of free schools, since amendments promote the principle of home rule by providing for alternative methods for selecting those units which are to be discontinued. [Robbins v. Joint Class A. Sch. Dist. No. 331, 72 Idaho 500, 244 P.2d 1104 \(1952\).](#)

### **Costs of Suit.**

In successful proceeding by electors to mandamus trustees to call an election, the costs should be assessed against the district and not personally against the trustees. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

### **Holding Elections.**

School patrons in previously organized school districts were not barred from holding an election concerning abandonment of school units merely because some schoolhouses belonging to other organized districts included in reorganized district had been sold and removed. *Knight v. Class A School Dist. No. 2*, 76 Idaho 140, 278 P.2d 991 (1955).

### **Mandamus.**

Mandamus lies to compel trustees to return to proper location schoolhouse moved without authority of electors. *People ex rel. Thompson v. Cothorn*, 36 Idaho 340, 210 P. 1000 (1922).

Mandamus was a proper remedy to require trustees to call an election. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

Plaintiffs, who alleged that they were qualified electors in petition to mandamus trustees to call an election, did not have to be the same electors who signed the petition. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

Proceedings for writ of mandate were not available to review acts of boards in respect to matters as to which they were vested with discretion, unless it clearly appeared that they acted arbitrarily and unjustly and in abuse of the discretion vested in them. *Wellard v. Marcum*, 82 Idaho 232, 351 P.2d 482 (1960).

### **Procedure.**

Former section set forth the procedure to be followed when a board of trustees decided to close a school — first the decision to discontinue, then the notice of proposed discontinuance, and then, if petitioned, an election. *Wellard v. Marcum*, 82 Idaho 232, 351 P.2d 482 (1960).

### **Removal of Grades.**

Removal of certain grades from particular attendance unit as result of reorganization was subject to vote of electors in attendance area. *Andrus v. Hill*, 73 Idaho 196, 249 P.2d 205 (1952).

**33-512. Governance of schools.** — The board of trustees of each school district shall have the following powers and duties:

(1) To fix the days of the year and the hours of the day when schools shall be in session. However:

(a) Each school district shall annually adopt and implement a school calendar which provides its students at each grade level with the following minimum number of instructional hours:

Grades	Hours
9-12	990
4-8	900
1-3	810
K	450
Alternative schools (any grades)	900

(b) School assemblies, testing and other instructionally related activities involving students directly may be included in the required instructional hours.

(c) When approved by a local school board, annual instructional hour requirements stated in paragraph (a) of this subsection may be reduced as follows:

(i) Up to a total of twenty-two (22) hours to accommodate staff development activities conducted on such days as the local school board deems appropriate.

(ii) Up to a total of eleven (11) hours of emergency school closures due to adverse weather conditions and facility failures.

However, transportation to and from school, passing times between classes, recess and lunch periods shall not be included.

(d) Student and staff activities related to the opening and closing of the school year, grade reporting, program planning, staff meetings, and other

classroom and building management activities shall not be counted as instructional time or in the reductions provided in paragraph (c)(i) of this subsection.

(e) For multiple shift programs, this rule applies to each shift (i.e., each student must have access to the minimum annual required hours of instruction).

(f) The instructional time requirement for grade 12 students may be reduced by action of a local school board for an amount of time not to exceed eleven (11) hours of instructional time.

(g) The state superintendent of public instruction may grant an exemption from the provisions of this section for an individual building within a district, when the closure of that building, for unforeseen circumstances, does not affect the attendance of other buildings within the district.

(h) The state board of education may grant a waiver of the minimum number of instructional hours for a school district when districtwide school closures are necessary as a result of natural occurrences creating unsafe conditions for students. A county or state disaster declaration must have been issued for one (1) or more of the counties in which the school district is located. A waiver request to the state board of education must describe the efforts by the school district to make up lost instructional hours, the range of grades impacted, and the number of hours the school district is requesting be waived.

(i) The reduction of instructional hours allowed in paragraphs (f) through (h) of this subsection may not be combined in a single school year.

(2) To adopt and carry on and to provide for the financing of a total educational program for the district. Such programs in other than elementary school districts may include education programs for out-of-school youth and adults, and such districts may provide classes in kindergarten;

(3) To provide, or require pupils to be provided with, suitable textbooks and supplies, and for advice on textbook selections may appoint a curricular materials adoption committee as provided in [section 33-512A, Idaho Code](#);

(4) To protect the morals and health of the pupils;

(5) To exclude from school, children not of school age;

(6) To prescribe rules for the disciplining of unruly or insubordinate pupils, including rules on student harassment, intimidation and bullying, such rules to be included in a district discipline code adopted by the board of trustees and a summarized version thereof to be provided in writing at the beginning of each school year to the teachers and students in the district in a manner consistent with the student's age, grade and level of academic achievement;

(7) To exclude from school, pupils with contagious or infectious diseases who are diagnosed or suspected as having a contagious or infectious disease or those who are not immune and have been exposed to a contagious or infectious disease; and to close school on order of the state board of health and welfare or local health authorities;

(8) To equip and maintain a suitable library or libraries in the school or schools and to exclude therefrom, and from the schools, all books, tracts, papers, and catechisms of sectarian nature;

(9) To determine school holidays. Any listing of school holidays shall include not less than the following: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day. Other days listed in [section 73-108, Idaho Code](#), if the same shall fall on a school day, shall be observed with appropriate ceremonies; and any days the state board of education may designate, following the proclamation by the governor, shall be school holidays;

(10) To erect and maintain on each schoolhouse or school grounds a suitable flagstaff or flagpole, and display thereon the flag of the United States of America on all days, except during inclement weather, when the school is in session; and for each Veterans Day, each school in session shall conduct and observe an appropriate program of at least one (1) class period remembering and honoring American veterans;

(11) To prohibit entrance to each schoolhouse or school grounds, to prohibit loitering in schoolhouses or on school grounds and to provide for the removal from each schoolhouse or school grounds of any individual or individuals who disrupt the educational processes or whose presence is detrimental to the morals, health, safety, academic learning or discipline of

the pupils. A person who disrupts the educational process or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils or who loiters in schoolhouses or on school grounds, is guilty of a misdemeanor;

(12) To supervise and regulate, including by contract with established entities, those extracurricular activities which are by definition outside of or in addition to the regular academic courses or curriculum of a public school, and which extracurricular activities shall not be considered to be a property, liberty or contract right of any student, and such extracurricular activities shall not be deemed a necessary element of a public school education, but shall be considered to be a privilege. For the purposes of extracurricular activities, any secondary school located in this state that is accredited by an organization approved through a process defined by the state department of education shall be able to fully participate in all extracurricular activities described in and governed by the provisions of this subsection;

(13) To govern the school district in compliance with state law and rules of the state board of education;

(14) To submit to the superintendent of public instruction not later than July 1 of each year documentation which meets the reporting requirements of the federal gun-free schools act of 1994 as contained within the federal improving America's schools act of 1994;

(15) To require that all certificated and noncertificated employees hired on or after July 1, 2008, and other individuals who are required by the provisions of [section 33-130, Idaho Code](#), to undergo a criminal history check shall submit a completed ten (10) finger fingerprint card or scan to the department of education no later than five (5) days following the first day of employment or unsupervised contact with students in a K-12 setting, whichever is sooner. Such employees and other individuals shall pay the cost of the criminal history check. If the criminal history check shows that the employee has been convicted of a felony crime enumerated in [section 33-1208, Idaho Code](#), it shall be grounds for immediate termination, dismissal or other personnel action of the district, except that it shall be the right of the school district to evaluate whether an individual convicted of one of these crimes and having been incarcerated for that crime shall be hired. Provided however, that any individual convicted of any felony



offense listed in [section 33-1208\(2\), Idaho Code](#), shall not be hired. For the purposes of criminal history checks, a substitute teacher is any individual who temporarily replaces a certificated classroom educator and is paid a substitute teacher wage for one (1) day or more during a school year. A substitute teacher who has undergone a criminal history check at the request of one (1) district in which he has been employed as a substitute shall not be required to undergo an additional criminal history check at the request of any other district in which he is employed as a substitute if the teacher has obtained a criminal history check within the previous five (5) years. If the district next employing the substitute still elects to require another criminal history check within the five (5) year period, that district shall pay the cost of the criminal history check or reimburse the substitute teacher for such cost. To remain on the statewide substitute teacher list maintained by the state department of education, the substitute teacher shall undergo a criminal history check every five (5) years;

(16) To maintain a safe environment for students by developing a system that cross-checks all contractors or other persons who have irregular contact with students against the statewide sex offender registry, by developing a school safety plan for each school and by meeting annually with emergency first responders to update the plans and discuss emergency exercises and operations;

(17) To provide support for teachers in their first two (2) years in the profession in the areas of: administrative and supervisory support, mentoring, peer assistance and professional development.

### **History.**

1963, ch. 13, § 62, p. 27; am. 1972, ch. 9, § 1, p. 13; am. 1975, ch. 107, § 1, p. 218; am. 1980, ch. 198, § 1, p. 458; am. 1984, ch. 286, § 13, p. 660; am. 1986, ch. 302, § 2, p. 752; am. 1990, ch. 402, § 1, p. 1127; am. 1991, ch. 173, § 1, p. 420; am. 1993, ch. 269, § 1, p. 904; am. 1994, ch. 25, § 2, p. 38; am. 1995, ch. 248, § 3, p. 819; am. 1996, ch. 375, § 2, p. 1273; am. 1999, ch. 219, § 1, p. 584; am. 2000, ch. 335, § 1, p. 1125; am. 2001, ch. 204, § 1, p. 695; am. 2003, ch. 299, § 2, p. 814; am. 2005, ch. 340, § 1, p. 1061; am. 2006, ch. 244, § 3, p. 740; am. 2006, ch. 313, § 2, p. 969; am. 2008, ch. 349, § 2, p. 962; am. 2012, ch. 93, § 1, p. 254; am. 2014, ch. 272,

§ 1, p. 678; am. 2014, ch. 325, § 1, p. 805; am. 2017, ch. 264, § 1, p. 657; am. 2020, ch. 264, § 2, p. 763.

## **STATUTORY NOTES**

### **Cross References.**

Arbor day, observance, § 33-1606.

Budgets of district, § 33-801.

Driver training courses, authority to establish, § 33-1704.

Exceptional children, education of, § 33-2001 et seq.

Expulsion of pupils, § 33-205.

Fiscal affairs of districts, duties, § 33-701.

General holidays enumerated, § 73-108.

Liability insurance on school buses, § 33-1507.

Libraries, authority to establish, § 33-2601.

Penalty for misdemeanors when not otherwise provided, § 18-113.

School bond issues, authority, § 33-1101 et seq.

School plant facilities reserve fund, authority to establish, § 33-901.

School property, duties with respect to, § 33-601.

Sectarian instruction or books prohibited, § 33-1603.

State superintendent of public instruction, § 67-1501 et seq.

School tax levy, §§ 33-802 to 33-807.

Traveling expenses of board members, payment, § 33-701.

### **Amendments.**

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 244, deleted former subsection (17), which read: “To ensure that each school district, including specially chartered school districts, participates in the Idaho student information management

system (ISIMS) to the full extent of its availability. The terms ‘Idaho student information management system,’ ‘appropriate access’ and ‘real time’ shall have such meanings as the terms are defined in [section 33-1001, Idaho Code](#),” and redesignated former subsection (18) as (17).

The 2006 amendment, by ch. 313, inserted “including rules on student harassment, intimidation and bullying” in subsection (6).

The 2008 amendment, by ch. 349, in subsection (7), inserted “and welfare”; and rewrote subsections (15) and (16) to the extent that a detailed comparison is impracticable.

The 2012 amendment, by ch. 93, substituted “curricular materials adoption committee” for “textbook adoption committee” in subsection (3) and added the second sentence in subsection (12).

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 272, added “Alternative schools (any grades) 900” at the end of the instructional hours table in paragraph (1)(a).

The 2014 amendment, by ch. 325, added “by developing a school safety plan for each school and by meeting annually with emergency first responders to update the plans and discuss emergency exercises and operations” at the end of subsection (16).

The 2017 amendment, by ch. 24, in subsection (1), added paragraphs (h) and (i).

The 2020 amendment, by ch. 264, substituted “statewide sex offender registry” for “statewide sex offender register” near the middle of subsection (16).

### **Federal References.**

The federal gun-free schools act of 1994, referred to in subsection (14), was repealed by Act January 8, 2002, [P.L. 107-110](#), Title 10, § 1011(5)(C). For present federal gun-free schools act, see [20 USCS § 7961 et seq.](#)

The federal improving America’s schools act of 1994, referred to in subsection (14), is Act Oct. 20, 1994, [P.L. 103-382](#), which generally

amended the elementary and secondary school act of 1968 (20 USCS § 6301 et seq.).

### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 2 of S.L. 1972, ch. 9 provided the act should take effect on and after July 1, 1972.

Section 2 of S.L. 2017, ch. 264 declared an emergency. Approved April 6, 2017.

## **JUDICIAL DECISIONS**

### Analysis

Construction and interpretation.

Morals and health.

Negligent supervision.

Principal's duty.

Regulation of appearance.

School district's duty.

Suicidal tendencies.

### **Construction and Interpretation.**

Language of subsection (11) evidences a legislative purpose of protecting, not prosecuting, pupils, and an interpretation of subsection (11) that criminalizes student misconduct will likely lead to unreasonably harsh results; further, an interpretation that subsection (11) is not intended to apply to public school students achieves the legislative purpose of the statute and avoids the harsh consequences of criminalizing virtually all student or teacher misconduct. *State v. Doe*, 140 Idaho 271, 92 P.3d 521 (2004).

Statutory language of subsection (6) provides public school officials with an effective means of disciplining unruly or disruptive pupils in an

administrative fashion, and in appropriate cases, recourse may also be had through various provisions of the criminal code, but there is little need to interpret subsection (11) as providing public school officials additional authority to pursue criminal sanctions against disruptive or detrimental public school students. [State v. Doe, 140 Idaho 271, 92 P.3d 521 \(2004\)](#).

### **Morals and Health.**

Injured student's argument that subsection (4) of this section provided some right of relief different from § 6-904A failed when the court examined what the student claimed the school defendants failed to do in order to fulfill their obligations under that section; student maintained that the school defendants failed to provide adequate hallway monitoring, an indisputably supervisory activity. [Mickelsen v. School Dist. No. 25, 127 Idaho 401, 901 P.2d 508 \(1995\)](#).

### **Negligent Supervision.**

Where it was undisputed that the persons who injured the plaintiffs' daughter were students under the supervision of the school district, the allegation of negligent supervision of the injured student, rather than her attackers, did not overcome the statutory immunity afforded by § 6-904A, and plaintiff's claim was barred. [Coonse v. Boise Sch. Dist., 132 Idaho 803, 979 P.2d 1161 \(1999\)](#).

Summary judgment was improperly granted to school district in case involving injuries sustained by student while participating in activity run by contractor hired by district. While school was immune from damages occurring as a result of ordinary negligence in their supervision of student, this immunity did not extend to damages which may have occurred as a result of district's negligent supervision of the contractor. [Sherer v. Pocatello Sch. Dist. # 25, 143 Idaho 486, 148 P.3d 1232 \(2006\)](#).

### **Principal's Duty.**

A school principal who called off an ambulance, which, had it not been called off, would have arrived in time to save the life of a student, had a statutory duty to act reasonably in the face of the foreseeable risk of harm to the student, as part of his duty to protect the health of all students for which he was responsible. See [Czaplicki v. Gooding Joint Sch. Dist. No. 231, 116 Idaho 326, 775 P.2d 640 \(1989\)](#).

## **Regulation of Appearance.**

A regulation requiring that students in a high school keep their hair length “off the eyes, off the ear, and off the collar” was held unconstitutional, when the school authorities failed to show that there was any substantial health, safety, academic or disciplinary problem created by the wearing of long hair. *Murphy v. Pocatello School Dist. No. 25*, 94 Idaho 32, 480 P.2d 878 (1971).

## **School District's Duty.**

A school district has a duty, exemplified in this section, to act affirmatively to prevent foreseeable harm to its students. *Brooks v. Logan*, 127 Idaho 484, 903 P.2d 73 (1995).

There is no statutory duty imposed by this section extending the duty of the school districts to supervise students while traveling home. *Rife v. Long*, 127 Idaho 841, 908 P.2d 143 (1995).

This section does not create a separate tort or a new cause of action beyond the duty of care that school districts owe to pupils. *Coonse v. Boise Sch. Dist.*, 132 Idaho 803, 979 P.2d 1161 (1999).

While there might be a common law negligence cause of action based on a duty of care school districts owe to pupils, this section does not create a negligence per se duty. *Hei v. Holzer*, 139 Idaho 81, 73 P.3d 94 (2003).

Danger to a murdered student was not foreseeable, and there was nothing in the record to suggest that the school district received information during a 2004 investigation of another student's threat of a school shooting that would provide notice that two and a half years later one of the two students involved would commit a murder that was not, in fact, a school shooting. *Stoddart v. Pocatello Sch. Dist. # 25*, 149 Idaho 679, 239 P.3d 784 (2010).

When plaintiffs' school age son was injured after another student pushed him and hit him on the head, the school district was not liable to plaintiffs for a breach of duty. There was no evidence supporting a claim that the school district's failure to provide or secure medical treatment for plaintiffs' son in any way exacerbated his injury. *Mareci v. Coeur d'Alene Sch. Dist. No. 271*, 150 Idaho 740, 250 P.3d 791 (2011).

## **Suicidal Tendencies.**

“Suicidal tendencies” is narrowly defined to mean a present aim, direction, or trend toward taking one’s own life. Thus, a student’s essay, that mentioned he had considered suicide in the past but had no such thoughts now, did not create a duty to warn on the part of his teacher. *Carrier v. Lake Pend Oreille School Dist.* #84, 142 Idaho 804, 134 P.3d 655 (2006).

**Cited in:** *Doe v. Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986); *Mickelsen v. School Dist. No. 25*, 127 Idaho 401, 901 P.2d 508 (1995).

## OPINIONS OF ATTORNEY GENERAL

### School Age.

All children, even those who have completed a portion of kindergarten prior to moving into Idaho during the school year, must meet the “school age” requirement of turning five years old prior to the sixteenth day of August [now September] in order to be allowed to enroll in an Idaho public school kindergarten. OAG 93-4.

## RESEARCH REFERENCES

**A.L.R.** — Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities. 11 A.L.R.3d 996.

Validity of regulation by public school authorities as to clothes or personal appearance of pupils. 14 A.L.R.3d 1201.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college. 32 A.L.R.3d 864.

Right to discipline pupil for conduct away from school grounds or not immediately connected with school activities. 53 A.L.R.3d 1124.

Student’s right to compel school officials to issue degree, diploma, or the like. 11 A.L.R.4th 1182.

Bible distribution or use in public schools — modern cases. 111 A.L.R. Fed. 121.

Liability of Public School or School District Under U.S. Constitution for Bullying, Harassment, or Intimidation of Student by Another Student. 98

A.L.R.6th 599.



**33-512A. District curricular materials adoption committees.** — The board of trustees of each school district may appoint a curricular materials adoption committee to advise the board on selection of curricular materials, as defined in section 33-118A, Idaho Code, for use within the schools of the district. Such a committee shall contain a membership at least one-fourth ( $\frac{1}{4}$ ) of which is persons who are not public educators or school trustees. All meetings of the committee shall be open to the public and any member of the public may attend such a meeting and file written or make oral objections to any curricular materials under consideration. Each school district shall have on hand and available to the public the titles, authors and publishers of all curricular materials being used in the district. The public has the right to inspect the instructional materials, except students' tests, used in the district's schools.

**History.**

**I.C., § 33-512A**, as added by 1986, ch. 302, § 3, p. 752; am. 1987, ch. 25, § 1, p. 34; am. 1998, ch. 88, § 4, p. 298.

**33-512B. Suicidal tendencies — Duty to warn.** — (1) Notwithstanding the provisions of section 33-512(4), Idaho Code, neither a teacher nor a school district shall have a duty to warn of the suicidal tendencies of a student absent the teacher's knowledge of direct evidence of such suicidal tendencies.

(2) "Direct evidence" means evidence which directly proves a fact without inference and which in itself, if true, conclusively establishes that fact. Direct evidence would include unequivocal and unambiguous oral or written statements by a student which would not cause a reasonable teacher to speculate regarding the existence of the fact in question; it would not include equivocal or ambiguous oral or written statements by a student which would cause a reasonable teacher to speculate regarding the existence of the fact in question.

(3) The existence of the teacher's knowledge of the direct evidence referred to in subsections (1) and (2) of this section shall be determined by the court as a matter of law.

**History.**

I.C., § 33-512B, as added by 1996, ch. 377, § 1, p. 1281.

**33-512C. Encouragement of gifted students.** — If a student completes any required high school course with a grade of C or higher before entering grade 9, if that course meets the same standards that are required in high school, if the course is taught by a properly certified teacher who meets the federal definition of being highly qualified for the course being taught and if the school providing the course is accredited as recognized by the state board, the student shall be given a grade for the successful completion of that course, and such grade and the number of credit hours assigned to the course shall be transferred to the student's high school transcript. The provisions of this section do not apply to senior projects.

**History.**

I.C., § 33-512C, as added by 2010, ch. 125, § 1, p. 272; am. 2018, ch. 110, § 1, p. 224.

**STATUTORY NOTES**

**Amendments.**

The 2018 amendment, by ch. 110, deleted the former next-to-last sentence, which read: “Two (2) semester credits of the required six (6) semester mathematics credits must be taken in the final year of high school.”

**Compiler's Notes.**

S.L. 2018, Chapter 110 became law without the signature of the governor.

**33-513. Professional personnel.** — The board of trustees of each school district, including any specially chartered district, shall have the following powers and duties:

1. To employ professional personnel, on written contract in form approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder. Should the board of trustees fail to enter into written contract for the employment of any such person, the state superintendent of public instruction shall withhold ensuing apportionments until such written contract be entered into. When the board of trustees has delivered a proposed contract for the next ensuing year to any such person, such person shall have a period of time to be determined by the board of trustees in its discretion, but in no event less than ten (10) calendar days from the date the contract is delivered, in which to sign the contract and return it to the board. If the board of trustees does not make a determination as to how long the person has to sign and return the contract, the default time limit shall be twenty-one (21) calendar days after the contract is delivered to the person. Delivery of a contract may be made only in person or by certified mail, return receipt requested or electronically, return receipt requested. When delivery is made in person, delivery of the contract must be acknowledged by a signed receipt. When delivery is made by certified mail or electronically, delivery must be acknowledged by the return of the certified mail receipt or return electronic receipt from the person to whom the contract was sent. If the delivery is made electronically, with return electronic receipt, and the district has not received a return of a signed contract and has not received an electronic read receipt from the employee, the district shall then resend the original electronically delivered contract to the employee via certified mail, return receipt requested, and provide such individual with a new date for contract return. Should the person willfully refuse to acknowledge receipt of the contract or the contract is not signed and returned to the board in the designated period of time or if no designated period of time is set by the board, the default time, the board or its designee may declare the position vacant.

The board of trustees shall withhold the salary of any teacher who does not hold a teaching certificate valid in this state. It shall not contract to require any teacher to make up time spent in attending any meeting called by the state board of education or by the state superintendent of public instruction; nor while attending regularly scheduled official meetings of the state teachers association.

No contract shall be issued for the next ensuing year until such time as the employee's formal written performance evaluation has been completed.

If applicable student data relating to Idaho's standards achievement test has not been received by the district within thirty (30) days of the deadline to complete the formal written performance evaluation for district employees, the school district or charter school shall utilize one (1) of the other objective measures of growth in student achievement as determined by the board of trustees or governing board, not including Idaho's standards achievement test, in order to complete the required student achievement component of performance evaluations.

2. In the case of school districts other than elementary school districts, to employ a superintendent of schools for a term not to exceed three (3) years, who shall be the executive officer of the board of trustees with such powers and duties as the board may prescribe. The superintendent shall also act as the authorized representative of the district whenever such is required, unless some other person shall be named by the board of trustees to act as its authorized representative. The board of trustees shall conduct an annual, written formal evaluation of the work of the superintendent of the district to be completed no later than June 1. The evaluation shall indicate the strengths and weaknesses of the superintendent's job performance in the year immediately preceding the evaluation and areas where improvement in the superintendent's job performance, in the view of the board of trustees, is called for.

3. To employ through written contract principals who shall hold a valid certificate appropriate to the position for which they are employed, who shall supervise the operation and management of the school in accordance with the policies established by the board of trustees and who shall be under the supervision of the superintendent.

4. To employ assistant superintendents and principals for a term not to exceed two (2) years. Service performed under such contract shall be included in meeting the provisions of [section 33-515, Idaho Code](#), as a teacher and persons eligible for a renewable contract as a teacher shall retain such eligibility. The superintendent, the superintendent's designee, or in a school district that does not employ a superintendent, the board of trustees, shall conduct an annual, written evaluation of each such employee's performance to be completed no later than June 1.

5. To suspend, grant leave of absence, place on probation or discharge certificated professional personnel for a material violation of any lawful rules or regulations of the board of trustees or of the state board of education, or for any conduct which could constitute grounds for revocation of a teaching certificate. Any certificated professional employee, except the superintendent, may be discharged during a contract term under the following procedures:

(a) The superintendent or any other duly authorized administrative officer of the school district may recommend the discharge of any certificated employee by filing with the board of trustees written notice specifying the alleged reasons for discharge.

(b) Upon receipt of such notice, the board, acting through its duly authorized administrative official, shall give the affected employee written notice of the allegations and the recommendation of discharge, along with written notice of a hearing before the board prior to any determination by the board of the truth of the allegations.

(c) The hearing shall be scheduled to take place not less than six (6) days nor more than twenty-one (21) days after receipt of the notice by the employee. The date provided for the hearing may be changed by mutual consent.

(d) The hearing shall be public unless the employee requests in writing that it be in executive session.

(e) All testimony at the hearing shall be given under oath or affirmation. Any member of the board, or the clerk of the board, may administer oaths to witnesses or affirmations by witnesses.

(f) The employee may be represented by legal counsel and/or by a representative of a local or state teachers association.

(g) The chairman of the board or the designee of the chairman shall conduct the hearing.

(h) The board shall cause an electronic record of the hearing to be made or shall employ a competent reporter to take stenographic or stenotype notes of all the testimony at the hearing. A transcript of the hearing shall be provided at cost by the board upon request of the employee.

(i) At the hearing, the superintendent or other duly authorized administrative officer shall present evidence to substantiate the allegations contained in such notice.

(j) The employee may produce evidence to refute the allegations. Any witness presented by the superintendent or by the employee shall be subject to cross-examination. The board may also examine witnesses and be represented by counsel.

(k) The affected employee may file written briefs and arguments with the board within three (3) days after the close of the hearing or such other time as may be agreed upon by the affected employee and the board.

(l) Within fifteen (15) days following the close of the hearing, the board shall determine and, acting through its duly authorized administrative official, shall notify the employee in writing whether the evidence presented at the hearing established the truth of the allegations and whether the employee is to be retained, immediately discharged, or discharged upon termination of the current contract.

(m) If the employee appeals the decision of the board of trustees to the district court, the district court may affirm the board's decision or set it aside and remand the matter to the board of trustees upon the following grounds and shall not set the same aside for any other grounds:

(i) That the findings of fact are not based upon any substantial, competent evidence;

(ii) That the board of trustees has acted without jurisdiction or in excess of its authority; or

- (iii) That the findings by the board of trustees as a matter of law do not support the decision.
- (n) The determination of the board of trustees shall be affirmed unless the court finds that the action of the board of trustees was:
  - (i) In violation of constitutional or statutory provisions;
  - (ii) In excess of the statutory authority of the board;
  - (iii) Made upon unlawful procedure; or
  - (iv) Arbitrary, capricious or an abuse of discretion.
- (o) Record augmentation on appeal:
  - (i) If, before the date set for any hearing at the district court, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material, relates to the validity of the board action and that there was good cause for failure to present it in the proceeding before the board, then the court may remand the matter to the board with direction that the board receive additional evidence and conduct additional fact-finding;
  - (ii) Any party desiring to augment the transcript or record may file a motion in the same manner and pursuant to the same procedure for augmentation of the record in appeals to the supreme court; and
  - (iii) The board may modify its action by reason of the additional evidence and shall file any modifications, new findings or decisions with the reviewing court.

6. To grant an employee's request for voluntary leave of absence. The board of trustees may delegate ongoing authority to grant an employee's request for voluntary leave of absence to the district's superintendent or other designee. Upon the superintendent or designee's granting of an employee's request for voluntary leave of absence, the board shall ratify or nullify the action at the next regularly scheduled board meeting.

7. To delegate to the superintendent or other designee the ongoing authority to place any employee on a period of involuntary leave of absence should the superintendent or designee believe that such action is in the best



interest of the district. Upon the superintendent or designee's action to place a certificated employee on a period of involuntary leave of absence, the board shall ratify or nullify the action of the superintendent or designee at the next regularly scheduled meeting of the board or at a special meeting of the board should the next regularly scheduled meeting of the board not be within a period of twenty-one (21) days from the date of the action.

(a) Where there is a criminal court order preventing the certificated employee from being in the presence of minors or students, preventing the employee from being in the presence of any other adult individual employed at the school or detaining the employee in prison or jail, the certificated employee's involuntary leave of absence shall be without pay due to the certificated employee's inability to perform the essential functions of the employee's position. Without such a condition or situation, the involuntary leave of absence shall be with pay.

(i) During the period of involuntary leave of absence without pay, the salary of the certificated employee will be maintained in a district-managed account. Should the certificated employee return to the district for active employment subsequent to the removal or dismissal of the court order, acquittal or adjudication of innocence, the district shall remit the salary funds, less the cost incurred by the district for the substitute hired to replace the certificated employee. Further, should the certificated employee return to the district under the provisions established in this subsection, the district shall arrange to have the certificated employee credited with the public employee retirement system of Idaho (PERSI) for the certificated employee's time away from work during the period of leave of absence.

(ii) During the period of involuntary leave of absence, the district shall continue to pay the district's portion of monthly costs associated with the certificated employee's health insurance benefits. The assumption of this payment by the district shall not alter the certificated employee's financial obligations, if any, under the policy.

(b) Should there be dual court orders preventing more than one (1) employee from being in the presence of one (1) or more other employees, all employees subject to the court order shall be excluded from the school pursuant to subsection 7.(a) of this section.

(c) If the period of involuntary leave of absence is due to the district's need to conduct an investigation into the conduct of the certificated employee, and there are no related criminal investigation(s) and/or criminal charges of any nature pending, the administration shall complete its investigation within a period of sixty (60) working days. On or before the sixtieth working day, the administrative leave shall either cease and the certificated employee shall be returned to his position of employment or the administration shall advance a personnel recommendation to the board of trustees. If a recommendation is advanced, the involuntary leave of absence shall continue until such time as the district board has made its decision in regard to the personnel recommendation with such decision effectively concluding the involuntary leave of absence. If a related criminal investigation is occurring and/or criminal charges are pending, the district shall not be bound to any limitation as to the duration of involuntary leave of absence. The timelines established in this section may be waived or modified by mutual agreement.

### **History.**

1963, ch. 13, § 71, p. 27; am. 1973, ch. 126, § 1, p. 238; am. 1975, ch. 256, § 1, p. 700; am. 1976, ch. 84, § 1, p. 288; am. 1976, ch. 86, § 2, p. 293; am. 1978, ch. 340, § 3, p. 874; am. 1981, ch. 311, § 1, p. 653; am. 1983, ch. 83, § 1, p. 169; am. 1984, ch. 286, § 8, p. 660; am. 1985, ch. 107, § 3, p. 191; am. 1986, ch. 46, § 1, p. 134; am. 1988, ch. 267, § 1, p. 883; am. 1991, ch. 173, § 2, p. 420; am. 2013, ch. 67, § 1, p. 162; am. 2013, ch. 298, § 1, p. 785; am. 2013, ch. 331, § 1, p. 863; am. 2013, ch. 347, § 1, p. 938; am. 2014, ch. 276, § 1, p. 695; am. 2016, ch. 191, § 1, p. 526.

## **STATUTORY NOTES**

### **Cross References.**

Drivers for school buses, employment, § 33-1509.

Limitation on authority, § 33-507.

Public employee retirement system, § 59-1301 et seq.

State superintendent of public instruction, § 67-1501 et seq.

Teachers, § 33-1201 et seq.

## **Amendments.**

This section was amended by four 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 67, in subsection 1, substituted “ten (10) calendar days” for “ten (10) days” in the third sentence, inserted the fourth sentence, inserted “or electronically, return receipt requested” in the fifth sentence, inserted “or electronically” and “or return electronic receipt” in the seventh sentence, added the eighth sentence, and inserted “or if no designated period of time is set by the board, the default time” and substituted, “the board or its designee” for “the board” in the last sentence.

The 2013 amendment, by ch. 298, added the last sentence in subsection 4.

The 2013 amendment, by ch. 331, added paragraphs 5(m) and 5(n).

The 2013 amendment, by ch. 347, added subsections 6 and 7.

The 2014 amendment, by ch. 276, inserted paragraph 5.(o) and inserted “certificated” preceding “employee” or similar language throughout subsection 7.

The 2016 amendment, by ch. 191, added the last two paragraphs in subsection 1.; and inserted “to be completed no later than June 1” in the third sentence of subsection 2. and in the last sentence of subsection 4.

## **Compiler’s Notes.**

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions. This section, as amended by S.L. 2011, ch. 96, was further amended by S.L. 2011, ch. 295 and S.L. 2012, ch. 265. However, those amendments also became null and void upon the rejection of Proposition 1 at the November 6, 2012 election.

The abbreviation and the letter “s” enclosed in parentheses so appeared in the law as enacted.

## **Effective Dates.**

Section 5 of S.L. 1983, ch. 83 declared an emergency. Approved March 28, 1983.

Section 2 of S.L. 2013 declared an emergency. Approved March 13, 2013.

## **JUDICIAL DECISIONS**

### **Analysis**

Assistant superintendent.

Discharge.

Hearing on discharge.

Judicial review.

Probation.

Suspension.

Voluntary resignation.

**Assistant Superintendent.**

Since this section sets out a detailed procedure to be followed when a school district seeks to employ professional personnel and teachers can be charged with knowledge of such procedure, assistant superintendent could not enter into a binding contract with teacher on behalf of the board by informing teacher that her name appeared on the school's roster and that roster was tentative only as some teachers might retire or seek a different position, for not only did assistant superintendent lack authority to make such promise, but teacher's reliance on such promise was unjustified. **Brown v. Caldwell Sch. Dist. No. 132, 127 Idaho 112, 898 P.2d 43 (1995).**

**Discharge.**

A school district which discharged a teacher for failure to sign a written contract to teach, for failure to register a valid teaching certificate properly indorsed by the state board of education with the school district, and for failure to return to school after termination of a vacation period did not wrongfully discharge the teacher nor defraud him of his right to be

employed. *Heine v. School Dist. No. 271*, 94 Idaho 85, 481 P.2d 316 (1971).

School boards are given broad authority to define what constitutes grounds for discharge by promulgation of rules and regulations governing professional conduct of school teachers. *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971, cert. denied, 434 U.S. 939, 98 S. Ct. 431, 54 L. Ed. 2d 299 (1977).

Where a teacher did not contest the fact that there was widespread dissatisfaction with his grading methods, did not contend that he was unaware that this was the reason for his discharge, and had, in effect, waived his hearing, the statutory requirement that teachers be discharged only for cause was satisfied. *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971, cert. denied, 434 U.S. 939, 98 S. Ct. 431, 54 L. Ed. 2d 299 (1977).

A teacher discharged for paddling students when they failed to work blackboard problems was not entitled to be suspended prior to discharge, since subsection 5 of this section is written in the disjunctive. *Kolp v. Board of Trustees*, 102 Idaho 320, 629 P.2d 1153 (1981).

### **Hearing on Discharge.**

While a board of trustees cannot discharge a teacher except upon its finding of cause as required by subsection 5 of this section, there is no requirement that such cause be established at a hearing, unless one is requested by the teacher. *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971, cert. denied, 434 U.S. 939, 98 S. Ct. 431, 54 L. Ed. 2d 299 (1977) (decided prior to 1978 amendment).

A hearing, as referred to in this statute denotes the right to confront witnesses, cross-examine them, and present evidence on the teacher's behalf. *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971, cert. denied, 434 U.S. 939, 98 S. Ct. 431, 54 L. Ed. 2d 299 (1977).

Where a teacher wilfully chose not to participate in a hearing concerning his discharge, he waived his right to the hearing contemplated by this statute and by the procedures established by the state board of education. *Ferguson v. Board of Trustees*, 98 Idaho 359, 564 P.2d 971, cert. denied,

434 U.S. 939, 98 S. Ct. 431, 54 L. Ed. 2d 299 (1977) (decided prior to 1978 amendment).

### **Judicial Review.**

Where a teacher seeks a writ of mandate, not for reinstatement during the term of a contract, but to compel continued employment after a first-year contract has expired, judicial review is limited to determining whether the teacher has a clear legal right to the relief sought. The judicial inquiry does not extend to whether the school board acted arbitrarily, unjustly and in abuse of discretion. *Knudson v. Boundary County School Dist. No. 101*, 104 Idaho 93, 656 P.2d 753 (Ct. App. 1982).

### **Probation.**

A teacher who was discharged during a contract term was not entitled to the benefit of a probationary period or an improvement program. *Bowler v. Board of Trustees*, 101 Idaho 537, 617 P.2d 841 (1980).

A first-year teacher had no clear legal right to probation as a prerequisite to denial of a contract for the second year. *Knudson v. Boundary County School Dist. No. 101*, 104 Idaho 93, 656 P.2d 753 (Ct. App. 1982).

When the legislature amended this section to provide that a probationary period be established for teachers whose work was found to be unsatisfactory, the legislature did not intend to create a vested right to probation as a prerequisite to denial of a contract for the next school year. Rather, the Legislature intended the probation requirement to be a means of securing compliance by school districts with the mandate for teacher evaluation programs. *Knudson v. Boundary County School Dist. No. 101*, 104 Idaho 93, 656 P.2d 753 (Ct. App. 1982) (decided prior to 1984 amendment).

Where teacher was placed on probation in spring of one year, was offered and accepted contract for following year, and, in the spring of that year, was notified that contract would not be renewed, there was substantial competent evidence to support the trial court's implicit finding that the probation established in the spring of the first year was still in effect during the second school year. *Webster v. Board of Trustees*, 104 Idaho 342, 659 P.2d 96 (1983).

The probation established under this section is not curtailed as a matter of law by the offer of a new contract; the probation period established by this provision is at minimum to run until the time for reissuing of contracts, and the board is not precluded from continuing a probation from one year to another. *Webster v. Board of Trustees*, 104 Idaho 342, 659 P.2d 96 (1983) (decided prior to 1984 amendment).

### **Suspension.**

The board of trustees of a district have the authority under this section to suspend a teacher without pay. *Loftus v. Snake River Sch. Dist.*, 130 Idaho 426, 942 P.2d 550 (1997).

### **Voluntary Resignation.**

Where school district superintendent, as an experienced educator, must have known that his three-year contract could be terminated only for limited, specific reasons but, nonetheless, he turned in his resignation when asked to do so by the school board, his resignation was voluntary and he could not maintain action for wrongful discharge. *Knee v. School Dist. No. 139*, 106 Idaho 152, 676 P.2d 727 (Ct. App. 1984).

**Cited in:** *Baker v. Independent School Dist.*, 107 Idaho 608, 691 P.2d 1223 (1984); *Gardner v. School Dist. No. 55*, 108 Idaho 434, 700 P.2d 56 (1985); *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989); *Rhoades v. Board of Trustees*, 131 Idaho 827, 965 P.2d 187 (1998).

## Decisions Under Prior Law

### Analysis

#### Prior contracts.

#### Teachers.

- Discharge.
- Employment contracts.

### **Prior Contracts.**

Under former statutes requiring electors of school district to vote tax levy for maintenance of school upon trustees' submission of budget setting forth

expenditures of preceding year and requirements for ensuing year, the action of the electors of a common school district in voting on annual budget specifying amount to be used for employment of teachers and total amount to be raised by tax levy for ensuing year was binding on trustees with respect to teachers' contracts previously executed. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

It was the duty of trustees to enter into contracts with teachers; but contracts entered into prior to the annual meeting were made subject to the statute which became part of it, giving the electors, when they met, power to modify as to wages and the length of the school year. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

### **Teachers.**

#### **— Discharge.**

Trustees of independent school district, unlike those of an ordinary school district, had unlimited power to dismiss teacher either with or without notice, and exercise of that power was not subject to review or control by courts. *Ewin v. Independent School Dist. No. 8*, 10 Idaho 102, 77 P. 222 (1904); *Hermann v. Independent School Dist. No. 1*, 24 Idaho 554, 135 P. 1159 (1913).

Before teacher of ordinary school district could be removed by trustees, he had to be given notice and opportunity to be heard in his defense. *Ewin v. Independent School Dist. No. 8*, 10 Idaho 102, 77 P. 222 (1904).

Motive and purpose of board of school trustees in discharging teacher under the former section could not be put in issue in action for damages under the charge of civil libel. *Barton v. Rogers*, 21 Idaho 609, 123 P. 478 (1912).

Board had power to discharge teacher for breach of contract or continued neglect of duty and such discharge in good faith was good defense to action for damages resulting from such discharge. *Hayes v. Independent School Dist. No. 9*, 45 Idaho 464, 262 P. 862 (1928).

#### **— Employment Contracts.**

Board of trustees and not superintendent of schools or clerk of district had power to contract or deal with teachers in the matter of employment.



*Hermann v. Independent School Dist. No. 1*, 24 Idaho 554, 135 P. 1159 (1913).

Contract form sent to teacher by school trustees and signed and returned by him did not, under the evidence, constitute a contract of employment as district school superintendent. *Ware v. Independent School Dist. No. 3*, 55 Idaho 510, 44 P.2d 1097 (1935).

The board was empowered to employ teachers; its contracts were those of the board and not the individual members and it could make a valid contract with a teacher for a term of school to begin the ensuing school year after the term of one of the trustees had expired. *Corum v. Common Sch. Dist. No. 21*, 55 Idaho 725, 47 P.2d 889 (1935).

Annual budget and tax levy fixed by electors of a common school district and specifying amount to be used for employment of teachers was binding on the trustees with respect to teachers' contracts previously executed. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

## RESEARCH REFERENCES

**A.L.R.** — What constitutes “incompetency” or “inefficiency” as a ground for dismissal or demotion of public school teacher. 4 *A.L.R.3d* 1090.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancelation of teacher's certificate. 47 *A.L.R.3d* 754.

Dismissal of, or disciplinary action against, public school teachers for violation of regulation as to dress or personal appearances of teachers. 58 *A.L.R.3d* 1227.

Right of schoolteacher to serve as member of school board in same school district where employed. 70 *A.L.R.3d* 1188.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 *A.L.R.3d* 19.

What constitutes “insubordination” as ground for dismissal of public school teacher. 78 *A.L.R.3d* 83.

Dismissal of public school teacher because of unauthorized absence or tardiness. 78 A.L.R.3d 117.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice. 52 A.L.R.4th 301.

Who may be included in “unit appropriate” for collective bargaining at school or college, under § 9(b) of National Labor Relations Act (29 USCS § 159(b)). 46 A.L.R. Fed. 580.

**33-513A. Professional personnel contracts for 2012-2013 school year.  
[Null and void.]**

Null and void, pursuant to S.L. 2013, ch. 140, § 2, effective July 1, 2015.

**History.**

**I.C., § 33-513A**, as added by 2013, ch. 140, § 1, p. 336.

**33-514. Issuance of annual contracts — Support programs — Categories of contracts — Optional placement.** — (1) The board of trustees shall establish criteria and procedures for the supervision and evaluation of certificated employees who are not employed on a renewable contract, as provided for in section 33-515, Idaho Code.

(2) There shall be three (3) categories of annual contracts available to local school districts under which to employ certificated personnel:

(a) A category 1 contract is a limited one-year contract as provided in [section 33-514A, Idaho Code](#).

(b) A category 2 contract is for certificated personnel in the first and second years of continuous employment with the same school district. Upon the decision by a local school board not to reemploy the person for the following year, the certificated employee shall be provided a written statement of reasons for non-reemployment by no later than the first day of July. No property rights shall attach to a category 2 contract and therefore the employee shall not be entitled to a review by the local board of the reasons or decision not to reemploy.

(c) A category 3 contract is for certificated personnel during the third year of continuous employment by the same school district. When any such employee's work is found to be unsatisfactory, a defined period of probation shall be established by the board, but in no case shall a probationary period be less than eight (8) weeks. After the probationary period, action shall be taken by the board as to whether the employee is to be retained, immediately discharged, discharged upon termination of the current contract or reemployed at the end of the contract term under a continued probationary status. Notwithstanding the provisions of sections 74-205 and 74-206, Idaho Code, a decision to place certificated personnel on probationary status may be made in executive session and the employee shall not be named in the minutes of the meeting. A record of the decision shall be placed in the employee's personnel file. This procedure shall not preclude recognition of unsatisfactory work at a subsequent evaluation and the establishment of a reasonable period of probation. In all instances, the employee shall be duly notified in writing

of the areas of work that are deficient, including the conditions of probation. Each such certificated employee on a category 3 contract shall be given notice, in writing, whether he or she will be reemployed for the next ensuing year. Such notice shall be given by the board of trustees no later than the first day of July of each such year. If the board of trustees has decided not to reemploy the certificated employee, then the notice must contain a statement of reasons for such decision and the employee shall, upon request, be given the opportunity for an informal review of such decision by the board of trustees. The parameters of an informal review shall be determined by the local board.

(3) School districts hiring an employee who has been on renewable contract status with another Idaho district, or has out-of-state experience which would otherwise qualify the certificated employee for renewable contract status in Idaho, shall have the option to immediately grant renewable contract status, or to place the employee on a category 3 annual contract. Such employment on a category 3 contract under the provisions of this subsection may be for one (1), two (2) or three (3) years.

(4) There shall be a minimum of one (1) written evaluation in each of the annual contract years of employment, which shall be completed no later than June 1 of each year. The evaluation shall include a minimum of two (2) documented observations, one (1) of which shall be completed prior to January 1 of each year. The requirement to provide at least one (1) written evaluation does not exclude additional evaluations that may be performed. No civil action for money damages shall arise for failure to comply with the provisions of this subsection.

### **History.**

**I.C., § 33-514**, as added by 1984, ch. 286, § 9, p. 660; am. 2000, ch. 66, § 1, p. 147; am. 2005, ch. 340, § 2, p. 1061; am. 2013, ch. 298, § 2, p. 785; am. 2013, ch. 353, § 1, p. 954; am. 2015, ch. 141, § 62, p. 379; am. 2016, ch. 191, § 2, p. 526.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 298, deleted the former second sentence in subsection (c), which read: “District procedures shall require at least one (1) evaluation prior to the beginning of the second semester of the school year and the results of any such evaluation shall be made a matter of record in the employee’s personnel file” and rewrote subsection (4), which formerly read: “There shall be a minimum of two (2) written evaluations in each of the annual contract years of employment, and at least one (1) evaluation shall be completed before January 1 of each year. The provisions of this subsection (4) shall not apply to employees on a category 1 contract.”

The 2013 amendment, by ch. 353, substituted “the first day of July” for “May 25” in the first sentence of paragraph (2)(b) and substituted “first day of July” for “twenty-fifth day of May” in the tenth sentence of paragraph (2)(c).

The 2015 amendment, by ch. 141, substituted “sections 74-205 and 74-206” for “sections 67-2344 and 67-2345” in the fourth sentence of paragraph (2)(c).

The 2016 amendment, by ch. 191, substituted “June 1” for “May 1” in the first sentence of subsection (4).

### **Compiler’s Notes.**

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendments by S.L. 2012, ch. 1 and S.L. 2012, ch. 265, became null and void, and this section returned to its pre-2011 provisions, prior to the 2013 amendments.

Section 7 of S.L. 2012, ch. 265 provided: “If Chapter 96, Laws of 2011, is rejected through voter referendum in November 2012, the provisions of this act shall be null, void and of no further force or effect.”

This section was to be repealed effective July 1, 2015, pursuant to S.L. 2013, ch. 353, § 3, as amended by S.L. 2014, ch. 144, § 2, at which time a new § 33-514 was to be enacted, pursuant to S.L. 2013, ch. 353, § 4. However, S.L. 2015, ch. 249, §§ 2 and 3 repealed S.L. 2013, ch. 353, §§ 3

and 4, repealing the repeal and the reenactment of the new section, effective July 1, 2015.

Section 62 of S.L. 2015, chapter 141, amended this section, as reenacted by S.L. 2013, ch. 353, § 4, which was repealed before going into effect. The 2015 amendment has been applied to the version of this section as amended by S.L. 2013, ch. 353, § 1.

Section 6 of S.L. 2013, ch. 353 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 7 of S.L. 2013, ch. 353 declared an emergency. Approved April 16, 2013.

## **JUDICIAL DECISIONS**

### **Analysis**

Due process.

Nonrenewal.

Notice.

Performance.

Probationary period.

Procedural requirements.

### **Due process.**

Although the requirement of notice with regard to renewable contract teachers is a means of providing procedural due process, nontenured teachers have not been found to have a “property” interest in continued employment. Therefore, nontenured teacher was not entitled to procedural due process and the analysis of her case was confined to an application of this section. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 898 P.2d 43 (1995).

## Nonrenewal.

A school district which elects not to renew a teacher's contract on the basis of unsatisfactory performance must first place that teacher on probation. *Gunter v. Board of Trustees*, 123 Idaho 910, 854 P.2d 253 (1993).

Probation is not required every time an annual contract teacher is not reemployed. There are circumstances unrelated to performance deficiencies which would allow a school board to make a decision not to reemploy without implicating the statutory probation requirement. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 898 P.2d 43 (1995).

Although school district believed it could hire someone better than plaintiff did not necessarily mean that her work was unsatisfactory; however, if a performance deficiency in a teacher is such that it affects whether he or she will be reemployed, this section required that that teacher be placed on probation. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 898 P.2d 43 (1995).

The requirement that a statement of reasons for the decision not to reemploy be included in the notice was included to provide a teacher with the means to develop a meaningful response to an adverse decision by a board of trustees; thus, the statement of reasons provided by the board in this case was in violation. The board essentially informed teacher that its decision was based on the belief that the district would be better off without her, but did not really convey any real information as to why plaintiff's contract was not renewed and, thus, plaintiff was given no meaningful opportunity to show why the decision was incorrect. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 898 P.2d 43 (1995).

An annual contract teacher does not have any expectation of continued employment, since the contract is annual and nonrenewable in nature. Plaintiff completed her contract term in full and, thus, could not have been "terminated." *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 918 P.2d 583 (1996).

Because the superintendent of a teacher's school district, instead of the board of trustees, informed the teacher that the district did not intend to reemploy her for the coming year, the board of trustees failed to take action



as required, and the teacher was entitled to be treated as though she had been reemployed for that year. *Rhoades v. Board of Trustees*, 131 Idaho 827, 965 P.2d 187 (1998).

The language of this section did not obligate a school district to renew a teacher's contract, where the teacher was an annual contract teacher who had served fewer than three years in the same school district. *Kingsbury v. Genesee Sch. Dist. No. 282*, 132 Idaho 791, 979 P.2d 1149 (1999).

### **Notice.**

The notification date set forth in the Professional Agreement of not later than May 15th was not in conflict with the express language of this section, which required notification no later than June 15th. This section does not expressly or impliedly preclude school districts from agreeing to provide notice earlier than June 15th. *Hunting v. Clark County Sch. Dist. No. 161*, 129 Idaho 634, 931 P.2d 628 (1997).

### **Performance.**

"Performance" is merely the means by which a teacher's "work" is evaluated and vice versa; any attempt at drawing a distinction between "work" and "performance" is "splitting hairs." *Gunter v. Board of Trustees*, 123 Idaho 910, 854 P.2d 253 (1993).

### **Probationary Period.**

Whether a 26-day period of probation was reasonable is an issue of material fact. *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 918 P.2d 583 (1996).

The only requirement regarding probation is that, if an employee's work is unsatisfactory, he must be placed on probation for a reasonable period of time before he can be terminated. There is nothing that requires that the contract of an annual contract teacher who has successfully completed a probationary period be renewed. *Kingsbury v. Genesee Sch. Dist. No. 282*, 132 Idaho 791, 979 P.2d 1149 (1999).

### **Procedural Requirements.**

The procedural requirements were met where plaintiff was given notice of her right to an informal hearing and was given an opportunity to be heard. No adjudicative hearing or formal review was required by this

section. *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 918 P.2d 583 (1996).

**Cited in:** *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989).

**33-514A. Issuance of limited contract — Category 1 contract. —** After August 1, or pursuant to section 33-507(3), Idaho Code, the board of trustees may exercise the option of employing certified personnel on a one (1) year limited contract, which may also be referred to as a category 1 contract consistent with the provisions of section 33-514, Idaho Code. Such a contract is specifically offered for the limited duration of the ensuing school year, and no further notice is required by the district to terminate the contract at the conclusion of the contract year.

**History.**

I.C., § 33-514A, as added by 1997, ch. 125, § 1, p. 374; am. 2000, ch. 66, § 2, p. 147; am. 2014, ch. 252, § 2, p. 634.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 252, inserted “or pursuant to **section 33-507(3), Idaho Code**” in the first sentence of the section.

**Compiler’s Notes.**

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions.

This section was to be repealed effective July 1, 2018, pursuant to S.L. 2014, ch. 252, § 5, at which time a new § 33-514A was to be enacted. However, S.L. 2018, ch. 197, §§ 2, 5 and 7 repealed S.L. 2014, ch. 252 §§ 5, 8 and 10, repealing the repeal and the reenactment of the new section, effective July 1, 2018.

**33-515. Issuance of renewable contracts.** — (1) During the third full year of continuous employment by the same school district, including any specially chartered district, each certificated employee named in subsection (32) of section 33-1001, Idaho Code, and each school nurse and school librarian shall be evaluated for a renewable contract and shall, upon having been offered a contract for the next ensuing year, and upon signing and timely returning a contract for a fourth full year, be placed on a renewable contract status with said school district entitling such individual to the right to automatic renewal of contract, subject to the provisions included in this chapter, provided that instructional staff who have not obtained a professional endorsement under section 33-1201A, Idaho Code, may not be placed on a renewable contract status, provided however, if the career ladder pursuant to section 33-1004B, Idaho Code, is not funded, then a professional endorsement shall not be required.

(2) At least once annually, the performance of each renewable contract certificated employee, school nurse, or school librarian shall be evaluated according to criteria and procedures established by the board of trustees in accordance with general guidelines approved by the state board of education. Such an evaluation shall be completed no later than June 1 of each year. The evaluation shall include a minimum of two (2) documented observations, one (1) of which shall be completed prior to January 1 of each year.

(3) Any contract automatically renewed under the provisions of this section may be renewed for a shorter term, longer term or the same length of term as stated in the current contract and at a greater, lesser or equal salary as that stated in the current contract. Absent the board's application of a formal reduction in force, renewals of standard teacher contracts may be for a shorter term, longer term or the same length of term as stated in the current standard teacher contract and at a greater, lesser or equal salary, and shall be uniformly applied to all employees based upon the district's adopted salary schedule to the extent allowable in [section 33-1004E, Idaho Code](#).

(a) Contracts issued pursuant to this section shall be issued on or before the first day of July each year.

(b) At the discretion of the board, the district may issue letters of intent for employment for the next ensuing school year to renewable contract status employees during May of each school year. Such letter of intent shall not state a specific duration of the contract or salary/benefits term for the next ensuing school year.

(c) Unless otherwise negotiated and ratified by both parties pursuant to sections 33-1271, et seq., Idaho Code, standard teacher renewals for terms shorter in length than that stated in the current standard contract of renewable certificated employees, should be considered and implemented only after the district has determined that the salary-based apportionment reimbursement that it estimates it will receive for the ensuing school year is less than the sum the district would otherwise be paying for salaries for certificated professional employees.

(4) Nothing in this section shall prevent the board of trustees from offering a renewed contract increasing the salary of any certificated person, or from reassigning an administrative employee to a nonadministrative position with appropriate reduction of salary from the preexisting salary level. In the event the board of trustees reassigns an administrative employee to a nonadministrative position, the board shall give written notice to the employee that contains a statement of the reasons for the reassignment. The employee, upon written request to the board, shall be entitled to an informal review of that decision. The process and procedure for the informal review shall be determined by the local board of trustees.

(5) Before a board of trustees can determine not to renew for reasons of an unsatisfactory report of the performance of any certificated person whose contract would otherwise be automatically renewed, such person shall be entitled to a reasonable period of probation. This period of probation shall be preceded by a written notice from the board of trustees with reasons for such probationary period and with provisions for adequate supervision and evaluation of the person's performance during the probationary period. Such period of probation shall not affect the person's renewable contract status. Consideration of probationary status for certificated personnel is consideration of the status of an employee within the meaning of [section](#)

74-206, Idaho Code, and may be held in executive session. If the consideration results in probationary status, the individual on probation shall not be named in the minutes of the meeting. A record of the decision shall be placed in the teacher's personnel file.

(6) If the board of trustees takes action to immediately discharge or discharge upon termination of the current contract a certificated person whose contract would otherwise be automatically renewed, the action of the board shall be consistent with the procedures specified in section 33-513(5), Idaho Code, and furthermore, the board shall notify the employee in writing whether there is just and reasonable cause not to renew the contract or to reduce the salary of the affected employee, and if so, what reasons it relied upon in that determination.

(7) If the board of trustees takes action after the declaration of a financial emergency pursuant to section 33-522, Idaho Code, and such action is directed at more than one (1) certificated employee, and if mutually agreed to by both parties, a single informal review shall be conducted. Without mutual consent of both parties, the board of trustees shall use the following procedure to conduct a single due process hearing within sixty-seven (67) days of the declaration of financial emergency pursuant to section 33-522(2), Idaho Code, or on or before June 22, whichever shall occur first:

(a) The superintendent or any other duly authorized administrative officer of the school district may recommend the change in the length of the term stated in the current contract or reduce the salary of any certificated employee by filing with the board of trustees written notice specifying the purported reasons for such changes.

(b) Upon receipt of such notice, the board of trustees, acting through its duly authorized administrative official, shall give the affected employees written notice of the reductions and the recommendation of the change in the length of the term stated in the current contract or the reduction of salary, along with written notice of a hearing before the board of trustees prior to any determination by the board of trustees.

(c) The hearing shall be scheduled to take place not less than six (6) days nor more than fourteen (14) days after receipt of the notice by the employees. The date provided for the hearing may be changed by mutual consent.

- (d) The hearing shall be open to the public.
- (e) All testimony at the hearing shall be given under oath or affirmation. Any member of the board, or the clerk of the board of trustees, may administer oaths to witnesses or affirmations by witnesses.
- (f) The employees may be represented by legal counsel and/or by a representative of a local or state education association.
- (g) The chairman of the board of trustees or the designee of the chairman shall conduct the hearing.
- (h) The board of trustees shall cause an electronic record of the hearing to be made or shall employ a competent reporter to take stenographic or stenotype notes of all the testimony at the hearing. A transcript of the hearing shall be provided at cost by the board of trustees upon request of the employee.
- (i) At the hearing, the superintendent or other duly authorized administrative officer shall present evidence to substantiate the reduction contained in such notice.
- (j) The employees may produce evidence to refute the reduction. Any witness presented by the superintendent or by the employees shall be subject to cross-examination. The board of trustees may also examine witnesses and be represented by counsel.
- (k) The affected employees may file written briefs and arguments with the board of trustees within three (3) days after the close of the hearing or such other time as may be agreed upon by the affected employees and the board of trustees.
- (l) Within seven (7) days following the close of the hearing, the board of trustees shall determine and, acting through its duly authorized administrative official, shall notify the employees in writing whether the evidence presented at the hearing established the need for the action taken.

The due process hearing pursuant to this subsection shall not be required if the board of trustees and the local education association reach an agreement on issues agreed upon pursuant to [section 33-522\(3\), Idaho Code](#).

(8) If the board of trustees, for reasons other than unsatisfactory service, for the ensuing contract year, determines to change the length of the term stated in the current contract, reduce the salary or not renew the contract of a certificated person whose contract would otherwise be automatically renewed, nothing herein shall require a probationary period.

(9) If the board of trustees, for reasons other than unsatisfactory service, for the ensuing contract year, determines to change the length of the term stated in the current contract or reduce the salary of a certificated person whose contract would otherwise be automatically renewed, nothing herein shall require any individualized due process proceeding. In such circumstance, the board shall hold a single informal review for all impacted employees. The process and procedure for the single informal review shall be determined by the local board of trustees.

### **History.**

1963, ch. 13, § 154, p. 27; am. 1973, ch. 126, § 2, p. 238; am. 1981, ch. 140, § 1, p. 242; am. 1982, ch. 86, § 1, p. 159; am. 1983, ch. 83, § 2, p. 169; am. 1983, ch. 212, § 1, p. 588; am. and redesisg. 1984, ch. 286, § 10, p. 660; am. 1988, ch. 118, § 2, p. 217; am. 1999, ch. 208, § 1, p. 556; am. 2000, ch. 264, § 1, p. 740; am. 2000, ch. 266, § 4, p. 743; am. 2003, ch. 299, § 5, p. 814; am. 2006, ch. 244, § 4, p. 740; am. 2009, ch. 171, § 2, p. 541; am. 2013, ch. 298, § 3, p. 785; am. 2013, ch. 353, § 2, p. 954; am. 2014, ch. 144, § 1, p. 387; am. 2015, ch. 141, § 63, p. 379; am. 2015, ch. 229, § 14, p. 701; am. 2015, ch. 344, § 1, p. 1298; am. 2016, ch. 191, § 3, p. 526; am. 2016, ch. 245, § 11, p. 642; am. 2019, ch. 328, § 7, p. 971.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 264, § 1, in the first paragraph substituted “subsection 13.” for “subsection 13”; in the second paragraph substituted “first day of June” for “fifteenth day of June”; and substituted “fifteenth day of May” for “twenty-fifth day of May”.



The 2000 amendment, by ch. 266, § 4, substituted “subsection 16.” for “subsection 13” in the first paragraph.

The 2006 amendment, by ch. 244, updated the subsection reference in the first paragraph.

The 2009 amendment, by ch. 171, added the subsection designations; added the exception at the end of subsection (3); and added subsection (7).

The 2012 amendment, by ch. 265, deleted “At least once annually” from the beginning of subsection (2) and added the last sentence in paragraph (4) (a).

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 298, added the present last two sentences in subsection (2).

The 2013 amendment, by ch. 353, rewrote the section to the extent that a detailed comparison is impracticable.

The 2014 amendment, by ch. 144, in paragraph (3)(c), deleted “for the 2013-2014 school year” following “Idaho Code” and substituted “ensuing school year” for “2013-2014 school year”.

This section was amended by three 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 141, substituted “74-206” for “67-2345” in subsection (5).

The 2015 amendment, by ch. 229, in subsection (1), substituted “subsection (24)” for “subsection (16)” near the middle and inserted “provided that instructional staff who have not obtained a professional endorsement under [section 33-1201A, Idaho Code](#), may not be placed on a renewable contract status provided however, if the career ladder pursuant to [section 33-1004B, Idaho Code](#), is not funded, then a professional endorsement shall not be required” at the end.

The 2015 amendment, by ch. 343, in subsection (1), substituted “section (24)” for “section (16)” near the middle and added “provided that instructional staff who have not obtained a professional endorsement under

section 33-1201A, Idaho Code, may not be placed on a renewable contract status provided however, if the career ladder pursuant to section 33-1004B, Idaho Code, is not funded, then a professional endorsement shall not be required” at the end.

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 191, substituted “June 1” for “May 1” in the second sentence of subsection (2).

The 2016 amendment, by ch. 245, updated the statutory reference in the first sentence in subsection (1) in light of the 2016 amendment of § 33-1001.

The 2019 amendment, by ch. 328, substituted “subsection (32) of section 33-1001, Idaho Code” for “subsection (25) of section 33-1001, Idaho Code” near the beginning of subsection (1).

### **Legislative Intent.**

Section 3 of S.L. 1984, ch. 286 read: “It is legislative intent that local school districts be encouraged to provide opportunities for a person certified as a consultant specialist to be employed by the school district on a part-time basis. In addition, the local school districts are encouraged to provide opportunities for teachers to become involved in dual careers of education-business or education-government without affecting the teacher’s renewable contract status as provided in section 33-515, Idaho Code.”

### **Compiler’s Notes.**

This section was formerly compiled as § 33-1212.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions. This section, as amended by S.L. 2011, ch. 96, was further amended by S.L. 2011, ch. 295 and S.L. 2012, ch. 265. However, those amendments also became null and void upon the rejection of Proposition 1 at the November 6, 2012 election.

This section was to be repealed effective July 1, 2015, pursuant to S.L. 2013, ch. 353, § 3, as amended by S.L. 2014, ch. 144, § 2, at which time a new § 33-515 was to be enacted, pursuant to S.L. 2013, ch. 353, § 5. However, S.L. 2015, ch. 249, §§ 2 and 4 repealed S.L. 2013, ch. 353, §§ 3 and 5, repealing the repeal and the reenactment of the new section, effective July 1, 2015.

Section 63 of S.L. 2015, chapter 141 and section 14 of S.L. 2015, chapter 229 amended this section, as reenacted by S.L. 2013, ch. 353, § 5, which was repealed before going into effect. The 2015 amendments have been applied to the version of this section as amended by S.L. 2013, ch. 353, § 2 and S.L. 2014, ch. 144, § 1.

Section 6 of S.L. 2013, ch. 353 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 2 of S.L. 1982, ch. 86 declared an emergency. Approved March 17, 1982.

Section 2 of S.L. 1983, ch. 212 declared an emergency. Approved April 13, 1983.

Section 3 of S.L. 1999, ch. 208 declared an emergency. Approved March 23, 1999.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

Section 7 of S.L. 2013, ch. 353 declared an emergency. Approved April 16, 2013.

Section 3 of S.L. 2014, ch. 144 declared an emergency and made this section retroactive to April 16, 2013.

## **JUDICIAL DECISIONS**

### **Analysis**

Binding contract.

Board's scope of inquiry.

Collective bargaining agreement.

Continuing contract.

Discharge hearing.

Dismissal.

Due process.

Effect of declining renewal.

Failure to renew.

Legislative intent.

Recommendations by superintendent.

Superintendent.

### **Binding Contract.**

Nothing denies a school district the power to limit its power over administrators by adopting a policy restricting its statutory discretion, and, where district did so when it adopted policy and incorporated it into principal's contract, there was no conflict or ambiguity; thus, principal had a property right in the principalship that could be ended only in conformity with the criteria set out in district's policy, and when without notice, without hearing and without evaluation he lost his principal's appointment, he was denied the process of law due him in terms of his contract and the policy of the district. *Peterson v. Minidoka County Sch. Dist. No. 331*, 118 F.3d 1351 (9th Cir. 1997).

### **Board's Scope of Inquiry.**

In discharging a teacher with renewable contract rights during a contract term, the school board's scope of inquiry is not limited to the teacher's conduct during that term. *Bowler v. Board of Trustees*, 101 Idaho 537, 617 P.2d 841 (1980).

### **Collective Bargaining Agreement.**

A school board, currently engaged in collective bargaining negotiations, or in mediation, with the association representing its teachers may send out binding individual contracts to teachers as required by statute, and those contracts become and are modified by applicable provisions of the agreement which, thereafter, results from negotiations and mediation which were timely brought and ongoing when the individual contracts were entered into. *Buhl Educ. Ass'n v. Joint School Dist.* No. 412, 101 Idaho 16, 607 P.2d 1070 (1980).

### **Continuing Contract.**

Although a teacher's contract by its provisions covered a definite term, and in a sense, except for the statutory renewal provisions, would expire at the termination date, in actuality, however, by application of the statutory law, the contract together with the statute is better called a "continuing contract," that can only be terminated by the school district for cause. *Robinson v. Joint School Dist.* No. 150, 100 Idaho 263, 596 P.2d 436 (1979).

### **Discharge Hearing.**

A teacher with renewable contract rights is entitled to a discharge hearing before an appropriately neutral board of trustees. *Bowler v. Board of Trustees*, 101 Idaho 537, 617 P.2d 841 (1980).

### **Dismissal.**

Inasmuch as a teacher with renewable contract rights had a property interest entitled to procedural due process protection, the teacher was entitled to know the reasons for his dismissal. *Bowler v. Board of Trustees*, 101 Idaho 537, 617 P.2d 841 (1980).

Where the reasons for nonrenewal of the teacher's contract were reduced enrollment and budget problems, such reasons were "reasons other than unsatisfactory service," within the meaning of this section. *Baker v. Independent School Dist.*, 107 Idaho 608, 691 P.2d 1223 (1984).

### **Due Process.**

The district court did not err in concluding that the school district violated this section by terminating renewable contract teachers' extra day assignments without following statutory procedures, because the notice and

hearing requirements apply to all terminations and salary reductions, not just those based on unsatisfactory job performance. *Lowder v. Minidoka County Joint Sch. Dist.*, 132 Idaho 834, 979 P.2d 1192 (1999).

### **Effect of Declining Renewal.**

Where on February 27 teacher advised school board in writing that he would decline to accept employment during the next school year, but where on March 30 teacher advised the board of his desire to withdraw the declination of future employment, teacher, whose contract was not renewed, was precluded by board's defenses of estoppel and waiver from obtaining a reinstatement of employment and lost wages. *Gardner v. Hollifield*, 97 Idaho 607, 549 P.2d 266 (1976).

### **Failure to Renew.**

A teacher's service of over three full years of continuous employment by the same school district conferred upon her the right of automatic renewal as part and parcel of her contract, and, unless the statutory procedures were properly followed, the failure to renew her contract was a breach of that continuing contract. *Robinson v. Joint School Dist. No. 150*, 100 Idaho 263, 596 P.2d 436 (1979).

The language of section § 33-514 did not obligate a school district to renew a teacher's contract where the teacher was an annual contract teacher who had served fewer than three years in the same school district. *Kingsbury v. Genesee Sch. Dist. No. 282*, 132 Idaho 791, 979 P.2d 1149 (1999).

### **Legislative Intent.**

Nowhere has the legislature expressly prohibited a school board from agreeing to arbitrate a contract dispute as to either interpretation or procedures of implementing the contract, nor has it statutorily excluded negotiation of administration of reduction-in-force provisions. *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989).

### **Recommendations by Superintendent.**

Where school superintendent had advised school board that plaintiff "was incompetent as a school teacher and not doing a competent job," plaintiff's allegations that superintendent knew that his statement concerning

incompetence was false presented material issues of fact which precluded summary judgment in plaintiff's action for damages for defamation. [Gardner v. Hollifield](#), 97 Idaho 607, 549 P.2d 266 (1976).

### **Superintendent.**

A superintendent has no renewable contract rights and serves in that capacity at the pleasure of the school board, whose discretion is limited only by the superintendent's contract and by the board's adherence to anti-discrimination statutes. [Gardner v. School Dist. No. 55](#), 108 Idaho 434, 700 P.2d 56 (1985).

**Cited in:** [Gardner v. Hollifield](#), 96 Idaho 609, 533 P.2d 730 (1975); [Ferguson v. Board of Trustees](#), 98 Idaho 359, 564 P.2d 971 (1977); [Heaney v. Board of Trustees](#), 98 Idaho 900, 575 P.2d 498 (1978); [Kolp v. Board of Trustees](#), 102 Idaho 320, 629 P.2d 1153 (1981); [Knudson v. Boundary County School Dist. No. 101](#), 104 Idaho 93, 656 P.2d 753 (Ct. App. 1982); [Webster v. Board of Trustees](#), 104 Idaho 342, 659 P.2d 96 (1983).

## **RESEARCH REFERENCES**

**A.L.R.** — Construction and effect of tenure provisions of contract or statute governing employment of faculty member by college or university. [66 A.L.R.3d 1018](#).

Who is "teacher" for purposes of tenure statute. [94 A.L.R.3d 141](#).

Sufficiency of notice of intention to discharge teacher, or not to rehire under statutes requiring such notice. [52 A.L.R.4th 301](#).

**33-515A. Supplemental contracts.** — (1) In addition to the provisions of sections 33-514, 33-514A and 33-515, Idaho Code, a board of trustees may enter into supplemental contracts to provide extra duty or extra day assignments for certificated employees.

(2) An extra duty assignment is, and extra duty supplemental contracts may be used for, an assignment which is not part of a certificated employee's regular teaching duties. Any such contract shall be separate and apart from the certificated employee's underlying contract, and no property rights shall attach to a supplemental extra duty contract. If a board of trustees determines not to reissue a supplemental extra duty contract, the board shall give written notice to the employee describing reasons for the decision not to reissue. The employee, upon written request to the board, shall be entitled to an informal review. The process and procedure for informal review shall be determined by the board of trustees. Should a board of trustees provide for additional procedures, nothing in this section shall be interpreted to limit those procedures. The contract shall be in a form approved by the state superintendent of public instruction.

(3) An extra day assignment is, and supplemental extra day contracts may be used for, an assignment of days of service in addition to the standard contract length used for the majority of certificated employees in the district. Such additional days may be in service of the same activities as the certificated employee's regular teaching duties. Any such extra day contracts shall provide the same daily rate of pay and rights to due process and procedures as provided by the certificated employee's underlying contract. The contract shall be in a form approved by the state superintendent of public instruction.

(4) For the purposes of this section, "underlying contract" means either a category 1, 2, 3 or renewable contract.

### **History.**

I.C., § 33-515A, as added by 1999, ch. 208, § 2, p. 556; am. 2016, ch. 288, § 1, p. 791.

### **STATUTORY NOTES**



**Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

**Amendments.**

The 2016 amendment, by ch. 288, designated the former second and third sentences in subsection (1) as present subsection (2) and redesignated former subsection (2) as subsection (3); inserted “or extra day” in subsection (1); in present subsection (2), inserted “extra duty” in the first and second sentences, substituted “the certificated employee’s underlying” for “an annual, a renewable or a limited one (1) year” in the second sentence, and inserted the present third through sixth sentences; rewrote subsection (3), which formerly read: “If a board of trustees determines not to reissue a supplemental contract, the board shall give written notice to the employee describing reasons for the decision not to reissue. The employee, upon written request to the board, shall be entitled to an informal review. The process and procedure for the informal review shall be determined by the local board of trustees. Within fifteen (15) days following the meeting with the employee, the board shall notify the employee of its final decision in the matter. Should a school district provide for additional procedures, nothing in this statute shall be interpreted to limit those procedures”; and added subsection (4).

**Compiler’s Notes.**

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions. This section was further amended by S.L. 2011, ch. 295. However, that amendment also became null and void upon the rejection of Proposition 1 at the November 6, 2012 election.

**Effective Dates.**

Section 3 of S.L. 1999, ch. 208 declared an emergency. Approved March 23, 1999.

**33-515B. Reduced enrollment — Contract termination and severance stipend. [Null and void.]**

Null and void, pursuant to rejection of Proposition 1 on November 6, 2012.

**History.**

I.C., § 33-515B, as added by 2011, ch. 96, § 6, p. 209.

**STATUTORY NOTES**

**Compiler's Notes.**

From March 17, 2011 to July 1, 2011, this section, as enacted by S.L. 2011, ch. 96, § 6, read:

**“33-515B. Reduced enrollment — Contract termination and severance stipend. —** (1) Each certificated employee contract shall include a provision allowing the board of trustees to terminate the contract in the event of a reduction in student enrollment of greater than one percent (1%). The percent of certificated employees that may be so terminated shall be limited to the percent that enrollment decreased beyond said one percent (1%) reduction. The enrollment figures used for such calculations shall be the same as those used for the calculation of emergency levies pursuant to [section 33-805, Idaho Code](#).

“(2) The school district shall notify those employees whose contracts are being terminated by no later than October 1. Such termination shall be effective as of a date specified by the board of trustees, but shall be no earlier than two (2) weeks after the date that the employee received notification, and no later than the end of the current term. No other notification, hearing or other process shall be required to terminate the contracts of employees pursuant to this section.

“(3) Selection of which employee contracts are to be terminated shall be at the sole discretion of the board of trustees, provided however, that the board of trustees shall not use seniority or contract status as a factor in making such determinations.

“(4) Employees whose contracts are terminated under the provisions of this section shall receive a severance payment from the school district equal to ten percent (10%) of the moneys that had yet to be earned under the contract for the remainder of the school year.

“(5) School districts shall furnish the state department of education with a list of employees whose contracts were terminated pursuant to this section, the dates on which such terminations were effective and the percentage of salary that had yet to be earned under the contract for the remainder of the school year. The state department of education shall calculate the salary-based apportionment and state-paid employee benefit amounts for each such employee, and, after reducing this allocation to account for the percent of the employee’s salary that had already been earned for the school year, distribute ten percent (10%) of the remaining allocation to the school district as a reimbursement for severance payments made, from moneys appropriated to the educational support program.”

This section was enacted by S.L. 2011, ch. 96, effective March 17, 2011. Session Laws 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section became null and void. Additionally, this section was repealed by S.L. 2011, ch. 335, § 1, effective July 1, 2011.

**33-516. Right to renewable contract when district is divided, consolidated or reorganized.** — If, by reason of the division of a school district, including any specially chartered district, or by reason of the consolidation of such a district with another district, or other districts, or by reason of the reorganization of such a district, the position held by any teacher entitled to a renewable contract is transferred from the control of one board of trustees to the control of a new or different board of trustees, the right to automatic renewal is not thereby lost, and such new or different board of trustees shall be subject to all of the provisions of this chapter with respect to such teacher in the same manner as if such teacher were its employee and had been its employee during the time such teacher was actually employed by the board of trustees from whose control the position was transferred.

**History.**

I.C., § 33-1212A, as added by 1973, ch. 126, § 3, p. 238; am. and redesign. 1984, ch. 286, § 11, p. 660.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-1212A.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions.

**33-517. Noncertificated personnel.** — The board of trustees of each school district, including any specially chartered district and any Idaho public charter school, shall have the following powers and duties:

(1) To provide that hiring and evaluation procedures for noncertificated personnel shall be in writing and shall be available for any noncertificated employee's review during regular business hours. Job descriptions for all noncertificated employees shall be written and shall be made available to employees of the district or other people seeking employment.

(2) To provide a grievance procedure for noncertificated employees of the district which meets the minimum standards of paragraphs (a) through (i) of this subsection. In the event a grievance procedure is not provided, the following grievance procedure shall apply.

(a) A grievance shall be defined as a written allegation of:

(i) A violation of current written board approved school district policy;

(ii) A violation of current written school procedures;

(iii) A violation of the current written board approved employee handbook;

(iv) A condition or conditions that jeopardize the health or safety of the employee or another; or

(v) Tasks assigned outside of the employee's essential job functions and for which the employee has no specialized training.

A noncertificated employee of the district may file a grievance about any matter related to his or her employment, only if it directly relates to any of the grounds for a grievance provided for in paragraph (a)(i) through (v) of this subsection. However, neither the rate of salary or wage of the employee nor the decision to terminate an employee for cause during the initial one hundred eighty (180) days of employment shall be a proper subject for consideration under the grievance procedure provided in this section. For the purposes of this section, "current" means as of the date of the incident giving rise to the grievance.

(b) If a noncertificated employee files a grievance, the employee shall submit the grievance in writing to the district's human resources administrator within six (6) working days of the incident giving rise to the grievance. The grievance shall state the nature of the grievance and the remedy sought. Within six (6) working days of receipt of the grievance, the district's human resources administrator shall schedule an informal grievance meeting with the grievant, the employee against whom the grievance is filed, respective advocates, as well as a district administrator who will not be involved in the statutory grievance process. The purpose of the meeting shall be to attempt to find a resolution to the employee grievance.

(c) If a resolution is not reached during the informal grievance meeting, the individual against whom a grievance is filed shall file a written response to the employee grievance within six (6) working days after the conclusion of the informal grievance meeting. Thereafter, the employee may appeal the grievance to the superintendent of the district or the superintendent's designee within six (6) working days of the receipt of the written response or within six (6) working days from the date the written response was due if the noncertificated employee received no written response. Within six (6) working days of an appeal, the superintendent or his designee shall provide a written response to the noncertificated employee.

(d) If the noncertificated employee is not satisfied with the response of the superintendent or the designee, or if there is no response by the superintendent or the designee within the time frame provided in subsection (2)(c) of this section, the noncertificated employee may request a review of the grievance by a hearing panel within six (6) working days from receipt of the response provided in subsection (2)(c) of this section if the employee received a written response, or six (6) working days from the date the superintendent or designee last had to respond if the noncertificated employee received no written response. Within ten (10) working days of receipt of an appeal, a panel consisting of three (3) persons; one (1) designated by the superintendent, one (1) designated by the employee, and one (1) agreed upon by the two (2) appointed members [shall convene] for the purpose of reviewing the appeal. Within ten (10) working days following completion of the review,

the panel shall submit its decision in writing to the noncertificated employee, the superintendent, and the board of trustees.

(e) The panel's decision shall be the final and conclusive resolution of the grievance unless the board of trustees overturns the panel's decision by resolution at the board of trustees' next regularly scheduled public meeting or unless, within forty-two (42) calendar days of the filing of the board's decision, either party appeals to the district court in the county where the school district is located. Upon appeal of a decision of the board of trustees, the district court may affirm or set aside and remand the matter to the board of trustees upon the following grounds, and shall not set the same aside on any other grounds:

(i) That the findings of fact are not based on any substantial, competent evidence;

(ii) That the board of trustees has acted without jurisdiction or in excess of its powers;

(iii) That the findings by the board of trustees as a matter of law do not support the decision.

(f) A noncertificated employee filing a grievance pursuant to this section shall be entitled to a representative of the employee's choice at each step of the grievance procedure provided in this section. The person against whom the grievance is filed, the superintendent or the superintendent's designee shall be entitled to a representative at each step of the grievance procedure. None of these individuals will be qualified to sit on the advisory grievance panel.

(g) The timelines of the grievance procedure established in this section may be waived or modified by mutual agreement.

(h) Utilization of the grievance procedure established pursuant to this section shall not constitute a waiver of any right of appeal available pursuant to law or regulation.

(i) Neither the board nor any member of the administration shall take reprisals affecting the employment status of any party in interest. The employee filing a grievance shall not take any reprisals regarding the course of the outcome of the grievance nor take any reprisals against any party or witness participating in the grievance.

(j) A noncertificated employee of a school district shall be provided a personnel file consistent with the provisions of [section 33-518, Idaho Code](#).

### **History.**

[I.C., § 33-517](#), as added by 1989, ch. 195, § 1, p. 490; am. 2014, ch. 166, § 1, p. 468.

## **STATUTORY NOTES**

### **Amendments.**

The 2014 amendment, by ch. 166, rewrote the section to the extent that a detailed comparison is impracticable.

### **Compiler's Notes.**

The bracketed insertion in the second sentence in paragraph (2)(d) was added by the compiler to account for terms inadvertently deleted by the 2014 amendment.

## **JUDICIAL DECISIONS**

### **Analysis**

[Private right of action.](#)

[Statutory procedures mandatory.](#)

### **Private Right of Action.**

There is no legislative history indicating an intent to create a private tort action and there is nothing within the act itself which indicates the need for a private tort action to fulfill the purpose of the act; therefore, this section does not create a private tort right of action. [Brock v. Board of Dirs., 134 Idaho 520, 5 P.3d 981 \(2000\)](#).

### **Statutory Procedures Mandatory.**

The grievance procedure contained in this section provides a multi-step process by which a noncertificated employee may appeal matters related to his or her employment, and, where the board did not provide the employee with a meaningful opportunity to be heard in a fair and impartial manner, it



also necessarily failed to comply with the statutory procedures set forth in subsection (2) and, as a result, the board exceeded its authority in terminating the employee. *Roberts v. Board of Trustees*, 134 Idaho 890, 11 P.3d 1108 (2000).

**33-517A. School districts — Noncertificated employees — Group health insurance.** — The board of trustees of each school district, including any specially chartered district, shall provide the same group health insurance benefits to all noncertificated employees who work twenty (20) hours or more per week, as provided to certificated employees.

**History.**

I.C., § 33-517A, as added by 1994, ch. 282, § 1, p. 883.

**33-518. Employee personnel files.** — The board of trustees of each school district, including any specially chartered district, shall provide for the establishment and maintenance of a personnel file for each employee of the school district. Each personnel file shall contain any and all material relevant to the evaluation of the employee. The employee shall be provided timely notice of all materials placed in the personnel file and shall be afforded the opportunity to attach a rebuttal to any such materials. Personnel files are declared to be confidential and excepted from public access under any provision of the Idaho Code, including, but not limited to, sections 74-102 and 59-1009, Idaho Code, provided that each employee or designated representative shall be given access to his own personnel file upon request and shall be provided copies of materials contained therein, with the exception of recommendation letters, in a timely manner upon request.

**History.**

I.C., § 33-518, as added by 1990, ch. 418, § 1, p. 1156; am. 2015, ch. 244, § 19, p. 1008; am. 2017, ch. 58, § 14, p. 91.

**STATUTORY NOTES**

**Amendments.**

The 2015 amendment, by ch. 244, substituted “9-338” for “9-301” in the last sentence.

The 2017 amendment, by ch. 58, substituted “sections 74-102 and 59-1009, Idaho Code” for “sections 9-338 and 59-1009, Idaho Code” near the middle of the last sentence.

**Compiler’s Notes.**

Section 59-1009, referred to in this section, was repealed by S.L. 1990, ch. 213, § 2.

**33-519. Release for religious instruction.** — Upon application of his parent or guardian, or, if the student has attained the age of eighteen (18) years, upon application of the student, a student attending a public school in grades nine (9) through twelve (12) may be excused from school for a period not exceeding five (5) periods in any week or not exceeding one hundred sixty-five (165) hours per student during any one (1) school year for religious or other purposes. Release time pursuant to this section shall be scheduled by the board of trustees upon application as provided herein and the board shall have reasonable discretion over the scheduling and timing of the release time. Release time pursuant to this section shall not reduce the minimum graduation requirements for accredited Idaho high schools. The provisions of this section shall not be deemed to authorize the use of any public school facility for religious instruction. The board of trustees of a school district may not authorize the use of, and public school facilities, personnel or equipment may not be utilized, to maintain attendance records for the benefit of release time classes for religious instruction. No credit shall be awarded by the school or school district for completion of courses during release time for religious purposes. At the discretion of the board credit may be granted for other purposes.

**History.**

I.C., § 33-519, as added by 1991, ch. 250, § 1, p. 618; am. 2010, ch. 180, § 1, p. 370.

**STATUTORY NOTES**

**Amendments.**

The 2010 amendment, by ch. 180, substituted “period not exceeding five (5) periods in any week or not exceeding” for “period not exceeding (5) periods in any week and not exceeding” in the first sentence.

**33-520. Policy governing medical inhalers, epinephrine auto-injectors, insulin and blood glucose monitoring supplies.** — (1) The board of trustees of each school district, including charter districts, shall adopt a policy permitting the self-administration of medication administered by way of a metered-dose inhaler by a pupil for asthma or other potentially life-threatening respiratory illness or by way of an epinephrine auto-injector for severe allergic reaction (anaphylaxis). On or before September 1, 2016, such boards of trustees shall also adopt a policy permitting the self-administration of diabetes medication and blood glucose monitoring by a pupil with diabetes.

(2) As used in this section: (a) “Medication” means an epinephrine auto-injector, a metered-dose inhaler or a dry powder inhaler or insulin prescribed by a physician and having an individual label; and (b) “Self-administration” means a student’s use of medication or of blood glucose monitoring supplies pursuant to prescription or written direction from a physician.

(3) A student who is permitted to self-administer medication or blood glucose monitoring pursuant to this section shall be permitted to possess and use a prescribed inhaler, an epinephrine auto-injector, insulin or blood glucose monitoring supplies at all times.

(4) Nothing in this section shall be construed to prevent a school district from requiring pupils to maintain current duplicate prescription medications or blood glucose monitoring supplies with the school nurse or, in the absence of such nurse, with the school administrator.

### **History.**

**I.C., § 33-520**, as added by 2004, ch. 336, § 1, p. 1006; am. 2008, ch. 305, § 1, p. 846; am. 2016, ch. 184, § 1, p. 496.

## **STATUTORY NOTES**

### **Amendments.**

The 2008 amendment, by ch. 305, in the section catchline, added “or epinephrine auto-injectors”; in subsection (1), added “or by way of an epinephrine auto-injector for severe allergic reaction (anaphylaxis)”; in paragraph (2)(a), inserted “an epinephrine auto-injector” and deleted “to alleviate asthmatic symptoms” following “powder inhaler”; and in subsection (3), deleted “asthma” preceding “medication” and inserted “or epinephrine auto-injector.”

The 2016 amendment, by ch. 184, rewrote the section heading, which formerly read: “Policy governing medical inhalers or epinephrine auto-injectors”; in subsection (1), deleted “by September 1, 2008” following “adopt a policy” in the first sentence and added the second sentence; in subsection (2), inserted “or insulin” in paragraph (a) and “or of blood glucose monitoring supplies” in paragraph (b); rewrote subsection (3), which formerly read: “A student who is permitted to self-administer medication pursuant to this section shall be permitted to possess and use a prescribed inhaler or epinephrine auto-injector at all times”; and inserted “or blood glucose monitoring supplies” in subsection (4).

### **Compiler’s Notes.**

The word enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 2 of S.L. 2004, ch. 336 declared an emergency. Approved March 24, 2004.

**33-520A. Life-threatening allergies in schools — Guidelines, stock supply of epinephrine auto-injectors and emergency administration. —**

(1) As used in this section, the following definitions shall apply:

(a) “Administer” means the direct application of an epinephrine auto-injector to the body of an individual.

(b) “Designated school personnel” means an employee, agent or volunteer of a school designated by the governing authority of a school who has completed the training to provide or administer an epinephrine auto-injector to a student.

(c) “Epinephrine auto-injector” means a device that automatically injects a premeasured dose of epinephrine.

(d) “Provide” means the supply of one (1) or more epinephrine auto-injectors to an individual.

(e) “School” means any public or nonpublic school.

(f) “Self-administration” means a student or other person’s discretionary use of an epinephrine auto-injector, whether provided by the student or by a school nurse or designated school personnel pursuant to the provisions of this section.

(2) Any physician, advanced practice registered nurse licensed to prescribe or physician assistant licensed to prescribe pursuant to title 54, Idaho Code, may prescribe epinephrine auto-injectors in the name of a school to be maintained for use in accordance with subsection (3) of this section. Licensed pharmacists and physicians may dispense epinephrine auto-injectors pursuant to a prescription issued in accordance with this subsection. A school may maintain a stock supply of epinephrine auto-injectors.

(3) The governing authority of a school may authorize school nurses and designated school personnel to do the following:

(a) Provide an epinephrine auto-injector to a student to self-administer the epinephrine auto-injector in accordance with a prescription specific to the student on file with the school nurse;

(b) Administer an epinephrine auto-injector to a student in accordance with a prescription specific to the student on file with the school nurse; and

(c) Administer an epinephrine auto-injector to any student or other individual on school premises that the school nurse or designated school personnel in good faith believes is experiencing anaphylaxis regardless of whether the student or other individual has a prescription for an epinephrine auto-injector.

(4) A school may enter into arrangements with manufacturers of epinephrine auto-injectors or third-party suppliers of epinephrine auto-injectors to obtain epinephrine auto-injectors at fair market price, reduced price or free.

(5) The governing authority of a school that participates in supplying and administering epinephrine auto-injectors pursuant to the provisions of this section shall do the following:

(a) Require each school that maintains a stock supply and administers epinephrine auto-injectors to submit a report of each incident at the school or related school event involving a severe allergic reaction or the administration of an epinephrine auto-injector to the governing authority of the school or its designee; and

(b) Establish detailed standards for training programs that must be completed by designated school personnel in order to provide or administer an epinephrine auto-injector in accordance with this section. Such training may be conducted online and, at a minimum, shall cover:

(i) Techniques on how to recognize symptoms of severe allergic reactions, including anaphylaxis;

(ii) Standards and procedures for the storage, administration and disposal of an epinephrine auto-injector; and

(iii) Emergency follow-up procedures.

(6) There shall be no civil liability for any damages for a physician, advanced practice registered nurse, physician's assistant or pharmacist providing a prescription or standing protocol for school epinephrine auto-injectors consistent with the standard of care for the provider. Further, there



shall be no civil liability for damages for a school or its employees or agents for any injuries that result from the administration or self-administration of an epinephrine auto-injector regardless of whether authorization for use was given by the student's parents, guardian or medical provider provided the actions taken in administering or providing the injector were reasonable under the circumstances. The liability protections in this section do not apply to acts or omissions constituting gross negligence, those that are reckless or that constitute willful and wanton behavior. The liability protections in this section are in addition to any provided under [section 5-330, Idaho Code](#).

**History.**

[I.C., § 33-520A](#), as added by 2014, ch. 146, § 1, p. 391.

**33-521. Employee severance in consolidated district.** — The board of trustees of any school district newly formed within the last twelve (12) months through the consolidation of two (2) or more school districts may offer a one (1) time severance payment to a maximum of ten percent (10%) of the employees that were previously employed by the separate school districts. Such severance offers shall be made entirely at the discretion of the board of trustees, and shall not be bound by custom, seniority or contractual commitment. Employees are under no obligation to accept a severance offer. Any employee accepting a severance payment shall not be eligible for reemployment by the school district for a one (1) year period thereafter.

The severance payment shall consist of fifty-five percent (55%) of the salary-based apportionment funds allocated for the employee in the last year, plus any applicable state paid employee benefits. Such severance shall be reduced by one-half ( $\frac{1}{2}$ ) for any employee who is simultaneously receiving a disbursement of early retirement incentive funds. The state department of education shall reimburse eligible school districts for one hundred percent (100%) of such costs, upon application by the school district.

#### **History.**

**I.C., § 33-521**, as added by 2007, ch. 79, § 3, p. 209; am. 2019, ch. 161, § 2, p. 526.

### **STATUTORY NOTES**

#### **Amendments.**

The 2019 amendment, by ch. 161, deleted “pursuant to **section 33-1004G, Idaho Code**” at the end of the second sentence in the second paragraph.

#### **Compiler’s Notes.**

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1

at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions.

**Effective Dates.**

Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

**33-522. Financial emergency.** — (1) Prior to declaring a financial emergency, the board of trustees shall hold a public meeting for the purpose of receiving input concerning possible solutions to the financial problems facing the school district.

(2) If the state department of education certifies that one (1) or more of the conditions in paragraph (a), (b) or (c) of this subsection are met, then the board of trustees may declare a financial emergency if it determines that the condition in paragraph (f) of this subsection is also met. Alternatively, the board of trustees may declare a financial emergency if it determines that either of the conditions in paragraph (d) or (e) of this subsection are met and the state department of education certifies that the condition set forth in paragraph (f) of this subsection is also met.

(a) Any of the base salary multipliers in [section 33-1004E, Idaho Code](#), are reduced by one and one-half percent (1 ½%) or more from any prior fiscal year.

(b) The minimum instructional salary provision in [section 33-1004E, Idaho Code](#), is reduced by one and one-half percent (1 ½%) or more from any prior fiscal year.

(c) The amount of total general fund money appropriated per support unit is reduced by greater than three percent (3%) from the original general fund appropriation per support unit of any prior fiscal year.

(d) The amount of property tax revenue to be collected by the school district that may be used for any general fund purpose, with the exception of any emergency levy funds, is reduced from the prior fiscal year, and the amount of said reduction represents more than one and one-half percent (1 ½%) of the school district's general fund budget for combined state and local revenues from the prior fiscal year.

(e) The school district's general fund has decreased by at least one and one-half percent (1 ½%) from the previous year's level due to a decrease in funding or natural disaster, but not as a result of a drop in the number of support units or the index multiplier calculated pursuant to [section 33-1004A, Idaho Code](#), or a change in the emergency levy.

(f) The school district's unrestricted general fund balance, which excludes funds restricted by state or federal law and considering both anticipated expenditures and revenue, is less than five and one-half percent (5 ½%) of the school district's unrestricted general fund budget at the time the financial emergency is declared or for the fiscal year for which the financial emergency is declared.

(3) Upon its declaration of a financial emergency, the board of trustees shall:

(a) Have the power to reopen the salary and benefits compensation aspects of the negotiated agreement, including the length of the certificated employee contracts and the amount of compensation and benefits; and

(b) If the parties to the negotiated agreement mutually agree, reopen other matters contained within the negotiated agreement directly affecting the financial circumstances in the school district.

If the board of trustees exercises the power provided in this subsection consistent with the requirements of subsection (2) of this section, both the board of trustees and the local education association shall meet and confer in good faith for the purpose of reaching an agreement on such issues.

(4) If, after the declaration of a financial emergency pursuant to subsection (2) of this section, both parties have met and conferred in good faith and an agreement has not been reached, the board of trustees may impose its last, best offer, following the outcome of the due process hearing held pursuant to [section 33-515\(7\), Idaho Code](#).

(5) A financial emergency declared pursuant to subsection (2) of this section shall be effective for only one (1) fiscal year at a time and shall not be declared by the board of trustees for a second consecutive year, unless so qualified by additional reductions pursuant to the conditions listed in subsection (2) of this section.

(6) The time requirements of sections 33-514(2) and 33-515(2), Idaho Code, shall not apply in the event a financial emergency is declared pursuant to subsection (2) of this section.

**History.**

I.C., § 33-522, as added by 2009, ch. 171, § 3, p. 541; am. 2013, ch. 255, § 1, p. 629.

## **STATUTORY NOTES**

### **Amendments.**

The 2013 amendment, by ch. 255, substituted “one and one-half percent (1 ½%)” for “five percent (5%)” in paragraph (2)(d) and substituted “one and one-half percent (1 ½%)” for “three percent (3%)” in paragraph (2)(e).

### **Compiler’s Notes.**

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions, prior to the 2013 amendment.

### **Effective Dates.**

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

**33-522A. Reduction in force defined.** — (1) A reduction in force may occur when there are:

- (a) Curriculum or program changes;
- (b) Negative changes in the financial conditions of the school district; (c) Decreases in student enrollment, including overall, by program, by grade or by school; or (d) Staffing or highly qualified teacher limitations of the district.

(2) For purposes of title 33[, Idaho Code], “reduction in force” means the elimination of a certificated staff position or positions or a portion or percentage of a position or positions, when there is one (1) or more of the following: (a) The elimination of an entire program or portions of a program; (b) The elimination of positions in certain grade levels only; (c) The elimination of a position by category; or

- (d) The elimination of a position in an overall review of the district.

(3)(a) The decision to institute a reduction in force and the selection of an employee or employees subject to such reduction shall be at the sole discretion of the board of trustees, except for the following limitation: The decision as to which employee or employees shall be subject to such reduction shall not be made solely on consideration of employee seniority or contract status.

(b) Each school district may adopt a policy establishing an equitable method of recalling individuals subject to a reduction in force if positions become available subsequent to the reduction in force.

### **History.**

**I.C., § 33-522A**, as added by 2015, ch. 249, § 1, p. 1045.

## **STATUTORY NOTES**

### **Compiler’s Notes.**

Former § 33-522A, Reduction in force, which comprised, **I.C., § 33-522A**, as added by 2013, ch. 272, § 1, p. 708, became null and void,

pursuant to S.L. 2013, ch. 272, § 3, as amended by S.L. 2014, ch. 142, § 1, effective July 1, 2015

The bracketed insertion in the introductory paragraph in subsection (2) was added by the compiler to conform to the statutory citation style.



**33-523. STEM diploma.** — (1) For purposes of this section, “STEM” means science, technology, engineering and mathematics.

(2) A public school student who successfully completes all graduation requirements established by the state board of education may receive a high school diploma designated as a STEM diploma if the student earned at least: (a) Eight (8) credits in mathematics; (b) Eight (8) credits in science; and (c) In addition to the credits listed in paragraphs (a) and (b) of this subsection, five (5) credits in the student’s choice of any or all subjects of science, technology, engineering or mathematics.

(3) This section does not require a student to complete more than the total credits required to graduate as determined by the state board of education.

(4) A student who has completed eight (8) or more credits in mathematics that include algebra II or a higher-level mathematics class before the student’s senior year is not required to take a mathematics class in the student’s senior year.

(5) Each school district and public charter school may create a diploma with a special STEM designation for students who meet the requirements of this section.

(6) The state board of education may promulgate rules necessary to implement the provisions of this section.

### **History.**

I.C., § 33-523, as added by 2018, ch. 60, § 1, p. 150.

## **STATUTORY NOTES**

### **Cross References.**

State board of education, § 33-101 et seq.

### **Prior Laws.**

Former § 33-523, Principals to determine new staffing, I.C., § 33-523, as added by S.L. 2011, ch. 96, § 10, p. 209, was enacted by S.L. 2011, ch. 96, effective March 17, 2011. Session Laws 2011, ch. 96 was the subject of

Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section became null and void.

**Effective Dates.**

Section 2 of S.L. 2018, ch. 60 declared an emergency. Approved March 13, 2018.

**33-524. Biliteracy diploma.** — (1) For purposes of this section, “world language” means a language other than English.

(2) A public school student who successfully completes all graduation requirements established by the state board of education may receive a high school diploma bearing a state seal of biliteracy if the student:

(a) Demonstrates proficiency in English according to an assessment or other method designated by the state board of education; and

(b) Demonstrates proficiency in at least one (1) world language by:

(i) Passing a foreign language advanced placement examination with a score of three (3) or higher;

(ii) Passing an international baccalaureate examination with a score of four (4) or higher;

(iii) Demonstrating intermediate mid level proficiency or higher in the world language based on the American council on the teaching of foreign languages (ACTFL) proficiency guidelines, using assessments approved by the state board of education;

(iv) Qualifying for four (4) competency-based credits by demonstrating proficiency in the world language at the intermediate mid level or higher based on the ACTFL proficiency guidelines, according to the school district’s or public charter school’s policy and procedure for competency-based credits for world languages; or

(v) Demonstrating proficiency in speaking, writing, and reading the world language through other national or international assessments approved by the state board of education at a level comparable to the intermediate mid level or higher in the ACTFL proficiency guidelines.

(3) This section does not require a student to complete more than the total credits required to graduate as determined by the state board of education.

(4) Each school district and public charter school may create a diploma indicating that a student has earned the state seal of biliteracy for students who meet the requirements of this section.

(5) The state board of education shall promulgate rules necessary to implement the provisions of this section.

**History.**

I.C., § 33-524, as added by 2020, ch. 89, § 1, p. 240.

**STATUTORY NOTES**

**Cross References.**

State board of education, § 33-101 et seq.

**Prior Laws.**

Former § 33-524, Liability insurance, which comprised I.C., § 33-524, as added by 2011, ch. 96, § 11, p. 209, was enacted by S.L. 2011, ch. 96, effective March 17, 2011. Session Laws 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section became null and void.

**Compiler's Notes.**

S.L. 2020, ch. 64, § 1 and S.L. 2020, ch. 89, § 1, each purported to enact a new section designated as § 33-524. The section enacted by S.L. 2020, ch. 64, § 1 has been redesignated by the compiler, through the use of brackets as § 33-525. The section as enacted by S.L. 2020, ch. 89, § 1 has been retained as § 33-524.

For further information on the American council on the teaching of foreign languages (ACTFL) proficiency guidelines, referred in subsection (2), see <https://www.actfl.org/publications/guidelines-and-manuals/actfl-proficiency-guidelines-2012>.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

**[33-525] 33-524. Advance enrollment for military dependents. —** Each school district shall establish a process under which a child may enroll in or register for courses at a school in the school district, regardless of where such child resides at the time of enrollment or registration, if the child is a dependent of a member of the United States armed forces who has received transfer orders to a location in Idaho and will, upon such transfer, reside in the school district.

**History.**

I.C., § 33-524, as added by 2020, ch. 64, § 1, p. 147.

**STATUTORY NOTES**

**Compiler's Notes.**

S.L. 2020, ch. 64, § 1 and S.L. 2020, ch. 89, § 1, each purported to enact a new section designated as § 33-524. The section enacted by S.L. 2020, ch. 64, § 1 has been redesignated by the compiler, through the use of brackets, as § 33-525. The section as enacted by S.L. 2020, ch. 89, § 1 has been retained as § 33-524.

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## **CHAPTER 6**

### **SCHOOL PROPERTY**

Section.

33-601. Real and personal property — Acquisition, use or disposal of same.

33-601A. Leasing of goods, equipment, buses and portable classrooms.

33-602. Use of school property or buildings for senior citizen centers.  
[Repealed.]

33-603. Payment of fees or returning of property.

33-604. Renewable thermal energy.

33-605. Sales of excess energy.

**33-601. Real and personal property — Acquisition, use or disposal of same.** — The board of trustees of each school district shall have the following powers and duties:

(1) To rent to or from others, school buildings or other property used, or to be used, for school purposes.

(2) To contract for the construction, repair, or improvement of any real property, or the acquisition, purchase or repair of any equipment, or other personal property necessary for the operation of the school district.

Except for the purchase of curricular materials as defined in [section 33-118A, Idaho Code](#), such contract shall be executed in accordance with the provisions of chapter 28, title 67, Idaho Code.

(3) To designate and purchase any real property necessary for school purposes or in the operation of the district, or remove any building, or dispose of any real property. Prior to, but not more than one (1) year prior to, any purchase or disposal of real property, the board shall have such property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees and shall be used to establish the value of the real property. The board of trustees shall determine the size of the site necessary for school purposes. The site shall be located within the incorporated limits of any city within the district; provided, however, that if the board finds that it is not in the best interests of the electors and the students of the district to locate the site within the incorporated limits of a city, the board, by duly adopted resolution setting forth the reasons for its finding, may designate a site located elsewhere within the district. In elementary school districts, except upon removal for highway purposes, a site may be designated or changed only after approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

(4)(a) To convey, except as provided by paragraph (b) of this subsection, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district in any property, real or personal. In elementary school districts, except such conveyance as is authorized by subsection (6) of this section, any of the transactions authorized in this subsection



shall be subject to the approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

Prior to such sale or conveyance, the board shall have the property appraised pursuant to this section, which appraisal shall be entered in the records of the board of trustees. The property may be sold at public auction or by sealed bids, as the board of trustees shall determine, to the highest bidder. Such property may be sold for cash or for such terms and conditions as the board of trustees shall determine for a period not exceeding ten (10) years, with the annual rate of interest on all deferred payments not less than seven percent (7%) per annum. The title to all property sold on contract shall be retained in the name of the school district until full payment has been made by the purchaser, and title to all property sold under a note and mortgage or deed of trust shall be transferred to the purchaser at the point of sale under the terms and conditions of the mortgage or deed of trust as the board of trustees shall determine. Notice of the time and the conditions of such sale shall be published twice, and proof thereof made, in accordance with subsections (2) and (3) of [section 33-402, Idaho Code](#), except that when the appraised value of the property is less than one thousand dollars (\$1,000), one (1) single notice by publication shall be sufficient and the property shall be sold by sealed bids or at public auction.

The board of trustees may accept the highest bid, may reject any bid, or reject all bids. If the real property was donated to the school district the board may, within a period of one (1) year from the time of the appraisal, sell the property without additional advertising or bidding. Otherwise, the board of trustees must have new appraisals made and again publish notice for bids, as before. During the sealed bid or public auction process, no real property of the school district can be sold for less than its appraised value. If, thereafter, no satisfactory bid is made and received, the board may proceed under its own direction to sell and convey the property for the highest price the market will bear.

The board of trustees may sell personal property, with an estimated value of less than one thousand dollars (\$1,000), without appraisal, by sealed bid or at public auction, provided that there has been not less than one (1) published advertisement prior to the sale of said property. If the property has an estimated value of less than five hundred dollars (\$500),

the property may be disposed of in the most cost-effective and expedient manner by an employee of the district empowered for that purpose by the board, provided however, such employee shall notify the board prior to disposal of said property.

(b) Real and personal property may be exchanged hereunder for other property. Provided, however, that aside from the provisions of this paragraph, any school district may by a vote of one-half (½) plus one (1) of the members of the full board of trustees, by resolution duly adopted, authorize the transfer or conveyance of any real or personal property owned by such school district to the government of the United States, any city, county, the state of Idaho, any hospital district organized under chapter 13, title 39, Idaho Code, any cooperative service agency formed pursuant to [section 33-317, Idaho Code](#), any other school district, the Idaho housing and finance association, any public charter school, any library district, any community college district, or any recreation district, with or without any consideration accruing to the school district, when in the judgment of the board of trustees it is for the interest of such school district that said transfer or conveyance be made. Prior to any transfer or conveyance of any real or personal property pursuant to this paragraph (4)(b), the board shall have the property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees and shall be used to establish the value of the real or personal property. Provided however, if the board of trustees finds it is in the school district's best interests to trade personal property to a person or entity for like kind personal property, the board of trustees may vote to elect to do so. The board of trustees may elect to abstain from an appraisal of the personal property if the estimated value of such property is less than five thousand dollars (\$5,000).

(5) To enter into contracts with any city located within the boundaries of the school district for the joint purchase, construction, development, maintenance and equipping of playgrounds, ball parks, swimming pools, and other recreational facilities upon property owned either by the school district or the city.

(6) To convey rights-of-way and easements for highway, public utility, and other purposes over, upon or across any school property and, when necessary to the use of such property for any such purpose, to authorize the

removal of school buildings to such new location, or locations, as shall be determined by the board of trustees, and such removal shall be made at no cost or expense to the school district.

(7) To authorize the use of any school building or vacant land of the district as a community center, or for any public purpose, and to establish a policy of charges, if any, to be made for such use.

(8) To exercise the right of eminent domain under the provisions of chapter 7, title 7, Idaho Code, for any of the uses and purposes provided in [section 7-701, Idaho Code](#).

(9) If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, or it is necessary to do emergency work to safeguard life, health or property, the board of trustees may pass a resolution declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, the board may expend any sum required in the emergency without compliance with this section.

### **History.**

1963, ch. 13, § 70, p. 27; am. 1967, ch. 73, § 1, p. 167; am. 1972, ch. 39, § 1, p. 61; am. 1973, ch. 14, § 1, p. 29; am. 1974, ch. 140, § 1, p. 1353; am. 1975, ch. 109, § 1, p. 222; am. 1978, ch. 165, § 1, p. 361; am. 1979, ch. 120, § 1, p. 370; am. 1980, ch. 120, § 1, p. 259; am. 1981, ch. 143, § 1, p. 246; am. 1982, ch. 87, § 1, p. 160; am. 1983, ch. 111, § 1, p. 238; am. 1984, ch. 45, § 1, p. 72; am. 1992, ch. 237, § 1, p. 705; am. 1998, ch. 88, § 5, p. 298; am. 2000, ch. 345, § 1, p. 1167; am. 2001, ch. 191, § 1, p. 654; am. 2003, ch. 264, § 1, p. 699; am. 2004, ch. 219, § 1, p. 655; am. 2005, ch. 213, § 5, p. 637; am. 2006, ch. 228, § 1, p. 680; am. 2008, ch. 191, § 1, p. 598; am. 2008, ch. 307, § 1, p. 853; am. 2009, ch. 171, § 4, p. 541; am. 2009, ch. 227, § 2, p. 708; am. 2009, ch. 341, § 44, p. 993; am. 2010, ch. 42, § 1, p. 73; am. 2012, ch. 15, § 1, p. 32.

## **STATUTORY NOTES**

### **Cross References.**

Avoidance of procurement and competitive bidding statutes, § 59-1026.

Idaho housing and finance association, § 67-6201 et seq.

School bonds, § 33-1101 et seq.

School plant facilities reserve fund, § 33-901.

State board for career technical education authorized to own property, §§ 33-2202, 33-2211.

State board of education authorized to own real and personal property, § 33-107.

Transfer of real or personal property to another unit of government, §§ 67-2322 to 67-2325.

### **Amendments.**

The 2006 amendment, by ch. 228, in the last sentence of the last paragraph of subsection (4)(a), deleted “board, by a unanimous vote of those members present, finds that the” preceding the first occurrence of “property” and “and is of insufficient value to defray the costs of arranging a sale” following “five hundred dollars (\$500),” and added the proviso at the end.

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 191, in the second sentence in subsection (4)(b), inserted “any public charter school.”

The 2008 amendment, by ch. 307, inserted “the Idaho housing and finance association” near the middle in subsection (4)(b).

This section was amended by three 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 171, substituted “subsections (7) and (8)” for “subsections g. and h.” in the last sentence of the first undesignated paragraph under subsection (4)(a).

The 2009 amendment, by ch. 227, inserted “any cooperative service agency formed pursuant to [section 33-317, Idaho Code](#)” in the first sentence in the fourth paragraph in subsection (4)(a).

The 2009 amendment, by ch. 341, updated the subsection references in the last sentence in the undesignated paragraph following subsection (4)(a).

The 2010 amendment, by ch. 42, in paragraph (4)(a), in the third paragraph, added the fourth sentence, added “for the highest price the market will bear” at the end of the last sentence, and deleted the former last sentence, which read: “In no case shall any real property of the school district be sold for less than its appraisal”; and in paragraph (4)(b), added the last two sentences.

The 2012 amendment, by ch. 15, inserted “or vacant land” in subsection (7).

### **Effective Dates.**

Section 2 of S.L. 1967, ch. 73 declared an emergency. Approved March 8, 1967.

Section 2 of S.L. 1974, ch. 140, declared an emergency. Approved March 28, 1974.

Section 2 of S.L. 2008, ch. 191 declared an emergency. Approved March 18, 2008.

Section 2 of S.L. 2008, ch. 307 declared an emergency. Approved March 28, 2008.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 2 of S.L. 2010, ch. 42 provided that the act should take effect on and after January 1, 2011.

## **JUDICIAL DECISIONS**

### **Bids.**

A bid for a new school building was unacceptable, where a contractor submitted a bid in violation of § 54-1904 by listing an “AA” subcontractor when a “AAA” subcontractor was required, which rendered the bid unresponsive and void under § 67-2310(6). *Neilson & Co. v. Cassia &*

Twin Falls County Joint Class A School Dist. 151, 96 Idaho 763, 536 P.2d 1113 (1975).

## Decisions Under Prior Law

### Analysis

Independent districts.

Purchase at execution sale.

Reversionary clause.

#### **Independent Districts.**

The election requirements for designating site for new school building did not apply to action taken by independent districts. *Hovenden v. Class A School Dist. No. 411*, 71 Idaho 4, 224 P.2d 1080 (1950).

#### **Purchase at Execution Sale.**

School district could purchase property at execution sale under judgment in its own favor. *Evans v. Power County*, 50 Idaho 690, 1 P.2d 614 (1931).

#### **Reversionary Clause.**

Buildings built by school district on land deeded for school purposes did not revert to grantor despite reversionary clause to that effect, since reversionary clause was invalid. *Independent Sch. Dist. No. 7 v. Barnes*, 71 Idaho 203, 228 P.2d 939 (1951).

## OPINIONS OF ATTORNEY GENERAL

#### **Use of School Facility.**

School personnel incur no liability for allowing use of school facilities for purposes of child abuse investigation, so long as the reporting was done in good faith and without malice. OAG 93-2.

## RESEARCH REFERENCES

**A.L.R.** — Prospective use for tax exempt purposes as entitling property to tax exemption. 54 A.L.R.3d 9.

Right to condemn property owned or used by private educational, charitable or religious organization. 80 A.L.R.3d 833.

**33-601A. Leasing of goods, equipment, buses and portable classrooms.** — No provision of chapter 6, title 33, or chapter 28, title 67, Idaho Code, shall be construed to prevent a board of trustees from entering into lease-purchase agreements for goods, equipment, buses or portable classrooms, provided the agreement is in writing and meets all of the following requirements:

(1) The annual lease payments shall reflect reasonable compensation for use; (2) No penalty shall be imposed on the school district for proper cancellation of the lease; (3) The right to exercise the option to purchase shall be at the sole discretion of the school district; and (4) The cost of purchase shall not exceed the reasonable value of the goods, equipment, buses or portable classrooms as of the time the option to purchase is exercised.

For the purposes of this section, “portable classroom” means a facility which is not so related to particular real estate that an interest in it arises under real estate law.

**History.**

I.C., § 33-601A, as added by 1992, ch. 175, § 1, p. 552; am. 2005, ch. 213, § 6, p. 637.



**33-602. Use of school property or buildings for senior citizen centers.  
[Repealed.]**

Repealed by S.L. 2017, ch. 32, § 1, effective July 1, 2017.

**History.**

I.C., § 33-602, as added by 1988, ch. 277, § 1, p. 908.

**33-603. Payment of fees or returning of property.** — The board of trustees of each school district shall have the power and the ability to require as a condition of graduation, as a condition of issuance of a diploma or certificate, or as a condition for issuance of a transcript, that any or all indebtedness incurred by the person when he was a student be satisfied, or that all books or other instructional material, uniforms, athletic equipment, advances on loans, or other personal property of the school district borrowed by the person when he was a student of the district be returned. Provided, the board of trustees of a school district or its designated employees may excuse the requirements of this section upon an adequate showing of financial need or other exigency and shall not delay transfer of school records to another school district or enrollment of the student in any other school.

**History.**

I.C., § 33-603, as added by 1992, ch. 112, § 1, p. 341; am. 1996, ch. 138, § 1, p. 463.

**33-604. Renewable thermal energy.** — The board of trustees of each school district is empowered to establish, create, develop, own, maintain, operate and contract for the establishment, creation, development, ownership, maintenance and operation of thermal heating and cooling energy generation and distribution systems, including hot or chilled water systems, where thermal energy is generated from biomass, geothermal or solar renewable energy.

**History.**

I.C., § 33-604, as added by 2010, ch. 220, § 1, p. 493.

**33-605. Sales of excess energy.** — The board of trustees of a school district which operates an energy system as described in section 33-604, Idaho Code, may use, sell or exchange excess thermal hot or chilled water not needed by the school district subject to the following conditions:

(1) Revenues from the sale of energy as described in [section 33-604, Idaho Code](#), shall be used for the benefit of the school district.

(2) Sale of energy as described in [section 33-604, Idaho Code](#), shall be pursuant to a school district written contract approved by resolution of the board of trustees of the school district, which resolution shall be forwarded to the state department of education.

**History.**

[I.C., § 33-605](#), as added by 2010, ch. 220, § 2, p. 493.

Idaho Code Ch. 7

• [Title 33](#) », « [Ch. 7](#) »

## **CHAPTER 7**

### **FISCAL AFFAIRS OF SCHOOL DISTRICTS**

#### **Section.**

33-701. Fiscal year — Payment and accounting of funds.

33-702. School warrants — How drawn.

33-703. Call of warrants for payment.

33-704. Warrants not presented within two years void.

33-705. Activity funds.

**33-701. Fiscal year — Payment and accounting of funds.** — The fiscal year of each school district shall be a period of twelve (12) months commencing on the first day of July in each year.

The board of trustees of each school district shall have the following powers and duties:

1. To determine and order paid all lawful expenses for salaries, wages and purchases, whether or not there be money in the treasury for payment of warrants drawn against any fund of the district. Warrants shall be signed by the treasurer of the district and countersigned by the chairman or vice-chairman of the board of trustees.

Whenever any school district has sufficient funds on deposit to do so, it may pay any allowed claim for salaries, wages or purchases by regular bank check signed by the treasurer or assistant treasurer of the district and countersigned by the chairman, or vice-chairman, of the board of trustees.

The total amount of warrants or orders for warrants drawn on any fund, together with disbursements from such fund in any other manner made, shall not exceed ninety-five percent (95%) of the estimated income and revenue accrued or accruing to such fund for the same school year, until such income and revenue shall have been paid into the treasury to the credit of the district;

2. To invest all or part of any plant facilities reserve fund, or any fund accumulated for the payment of interest on, and the redemption of, outstanding bonds, or other obligations of the district in bonds or certificates of indebtedness of the United States of America, or in bonds or investments permitted by sections 67-1210 and 67-1210A, Idaho Code, or warrants of the state of Idaho, or in warrants or tax anticipation notes of any county or school district of the state of Idaho, when such investments shall be due and payable on or before the date any plant facilities reserve fund shall be required to be expended or any bonds or other obligations, or interest thereon, of the investing district shall become payable.

Whenever in the judgment of the board of trustees, the proceeds of any bond issue should be temporarily invested pending the expenditure of such

proceeds for the purposes for which such bonds were issued, the proceeds may be invested in the manner and form hereinabove prescribed. Any interest, or profits accruing from such investments shall be used for the purposes for which the bonds were issued. Unless otherwise provided by law, any interest or profits accruing from the investment of any funds shall be credited to the general fund of the district;

3. To insure any schoolhouse and other property, and the district, against any loss by fire, casualty, or liability, and the board, its officers and employees, and to preserve its property for the benefit of the district. In case of loss of any insured property, any proceeds from insurance:

(a) May be expended in constructing a temporary or permanent structure, but no sum greater than the insurance proceeds shall be so expended except upon approval of a majority of the school district electors voting in an election called for that purpose; or

(b) May be placed in and made a part of the school plant facilities reserve fund of the district, if the district has such a fund; or

(c) May be placed in a separate account in the bond interest and redemption fund of the district to repay any kind of obligation incurred by the district in replacing or restoring the property for which the insurance proceeds were received, and shall not be included in the computations of bond and bond interest levies as provided in [section 33-802A, Idaho Code](#).

If the proceeds of any insurance received by a school district by reason of loss on real property shall be less than five thousand dollars (\$5,000), such proceeds may be credited to the general fund of the district;

4. To pay from the general fund of the district the expense of any member of the board incurred while traveling on the business of the board, or attending any meeting called by the state board of education or by the state superintendent of public instruction, or attending any annual or special meetings of the state school trustees association, and to pay the membership fee of the board of trustees in said association. Whenever any member of the board of trustees resides at such distance from the meeting place of the board as to require, in the judgment of the board, such member to incur extraordinary expense in traveling from his home to and from said meeting



place, the board may approve payment to such member of the extraordinary expense incurred in attending any meeting of the board.

For the purpose of this paragraph, the term “expense” or “extraordinary expense” shall include allowance for mileage or actual travel expense incurred;

5. To prepare, or cause to be prepared and published, in the manner hereinafter prescribed, within one hundred twenty (120) days from the last day of each fiscal year, an annual statement of financial condition and report of the school district as of the end of such fiscal year in a form prescribed by the state superintendent of public instruction. Such annual statement shall include, but not be limited to, the amounts of money budgeted and received and from what sources, and the amounts budgeted and expended for salaries and other expenses by category. Salaries may be reported in gross amount. Each school district shall have available at the administrative office, upon request, a full and complete list of vendors and the amount paid to each and a list of the number of teachers paid at each of the several stated gross salary levels in effect in the district.

Nothing herein provided shall be construed as limiting any school district as to any additional or supplementary statements and reports it may elect to make for the purpose of informing the public of its financial operations, either as to form, content, method, or frequency; and if all the information required herein to be published shall have been published as provided herein at regular intervals during the fiscal year covering successive portions of the fiscal year, then such information may be omitted from the annual statement of financial condition and report for such portions of the fiscal year as already have been reported.

The annual statement of financial condition and report shall be published within the time above prescribed in one (1) issue of a newspaper printed and published within the district, or, if there be none, then in a newspaper as provided in [section 60-106, Idaho Code](#), published within the district, or, if there be none, then in a newspaper as provided in [section 60-106, Idaho Code](#), in the county in which the school district is located, or, if more than one (1) newspaper is published in said district or county, then in the newspaper most likely to give best general notice of the contents of such annual statement of financial condition and report to the residents of said

district; provided, that if no newspaper is published in the district or county, then such statement of financial condition and report shall be published in a newspaper as provided in [section 60-106, Idaho Code](#), most likely to give best general notice of the contents to the residents of said district.

The chairman, clerk and treasurer of each school district shall certify the annual statement of financial condition and report to be true and correct, and the certification shall be included in each published statement.

In the event the board of trustees of any school district shall fail to prepare or cause to be prepared or to publish the annual statement of financial condition and report as herein required, the state superintendent of public instruction shall cause the same to be prepared and published, and the cost thereof shall be an obligation of the school district. One (1) copy of the annual statement of financial condition and report shall be retained in the office of the clerk of the board of school trustees, where the same shall be open at all times to examination and inspection by any person;

6. To cause to be made a full and complete audit of the financial statements of the district as required in [section 67-450B, Idaho Code](#).

The auditor shall be employed on written contract.

One (1) copy of the audit report shall be filed with the state department of education, after its acceptance by the board of trustees, but not later than November 10. If the audit report is not received by the state department of education by November 10, the department may withhold all or a portion of the district's November 15 distribution made pursuant to [section 33-1009, Idaho Code](#), for noncompliance with the audit report deadline. Provided however, a district may appeal to the state board of education for reconsideration, in which case the state board of education may reinstate or adjust the funds withheld.

In the event the state department of education requests further explanation or additional information regarding a school district's audit report, such school district shall provide a full and complete response to the state department of education within thirty (30) days of receipt of the state department's request. If a school district fails to respond within the thirty (30) day time limit, the state department of education may withhold all or a portion of the district's next scheduled distribution to be made pursuant to

[section 33-1009, Idaho Code](#). Provided however, a district may appeal to the state board of education for reconsideration, in which case the state board of education may reinstate or adjust the funds withheld;

7. To file annually with the state department of education such financial and statistical reports as said state superintendent of public instruction may require;

8. To order and have destroyed any canceled check or warrant, or any form of claim or voucher which has been paid, at any time after five (5) years from the date the same was canceled and paid;

9. To review the school district budget periodically and make appropriate budget adjustments to reflect the availability of funds and the requirements of the school district. Any person or persons proposing a budget adjustment under this section shall notify in writing each member of the board of trustees one (1) week prior to the meeting at which such proposal will be made. Prior to the final vote on such a proposal, notice shall be posted and published once, as prescribed in [section 33-402, Idaho Code](#). A budget adjustment shall not be approved unless voted affirmatively by sixty percent (60%) of the members of the board of trustees. Such amended budgets shall be submitted to the state superintendent of public instruction;

10. To invest any money coming into the hands of the school district in investments permitted by [section 67-1210, Idaho Code](#). Unless otherwise provided by law, any interest or profits accruing from the investment of any funds shall be credited to the general fund of the district.

### **History.**

1963, ch. 13, § 66, p. 27; am. 1963, ch. 211, § 1, p. 601; am. 1967, ch. 8, § 1, p. 10; am. 1972, ch. 124, § 1, p. 245; am. 1973, ch. 17, § 1, p. 34; am. 1976, ch. 83, § 1, p. 283; am. 1977, ch. 71, § 3, p. 134; am. 1978, ch. 61, § 1, p. 123; am. 1978, ch. 103, § 3, p. 210; am. 1979, ch. 77, § 1, p. 189; am. 1980, ch. 30, § 1, p. 50; am. 1980, ch. 352, § 1, p. 911; am. 1981, ch. 22, § 1, p. 36; am. 1985, ch. 107, § 4, p. 191; am. 1985, ch. 234, § 1, p. 554; am. 1986, ch. 47, § 1, p. 137; am. 1988, ch. 77, § 3, p. 132; am. 1989, ch. 18, § 1, p. 19; am. 1990, ch. 198, § 2, p. 443; am. 1993, ch. 327, § 15, p. 1186; am. 1993, ch. 387, § 6, p. 1417; am. 2006 (1st E.S.), ch. 1, § 2; am. 2007, ch. 169, § 1, p. 498; am. 2008, ch. 160, § 1, p. 457.

## STATUTORY NOTES

### Cross References.

School plant facilities reserve fund, § 33-901.

State superintendent of public instruction, § 67-1501 et seq.

### Amendments.

This section was amended by two 1993 acts which appear to be compatible and have been compiled together.

The 1993 amendment, by ch. 327, § 15, in the third paragraph of subdivision 6. substituted “council” for “auditor”. Prior to the amendment, the paragraph read: “One (1) copy of the report of the audit shall be filed with the legislative auditor, and one (1) copy shall be filed with the state department of education, after its acceptance by the board of trustees, but not later than October 15;”. However, ch. 387, § 6 deleted the portion of the paragraph which contained the word “auditor”. Therefore, the paragraph is set out above as amended by ch. 387, § 6.

The 1993 amendment, by ch. 387, § 6, in the first paragraph of subdivision 6. deleted “each year,” following “To cause to be made”; deleted “of all” following “a full and complete audit”; substituted “statements” for “transactions” following “of the financial”; substituted “as required in [section 67-450B, Idaho Code](#)” for “, and of the activity or student body funds, except that in elementary school districts such audit shall be made at intervals of not more than two (2) years. Any audit shall be made by and under the direction of the board of trustees by an independent auditor, in accordance with generally accepted auditing standards and procedures”; in the third paragraph of subdivision 6. added “audit” following “One (1) copy of the”; deleted “of the audit” preceding “shall be filed”; and deleted “with the legislative auditor, and one (1) copy shall be filed” preceding “with the state department of education,”.

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, deleted the former second sentence of Paragraph 9, which read: “Revenue derived from maintenance and operation levies made pursuant to section 33-802 2, Idaho Code, shall be excluded from budget adjustments as provided in this paragraph”.

The 2007 amendment, by ch. 169, inserted “investments permitted by sections 67-1210 and 67-1210A, Idaho Code” in subsection 2.

The 2008 amendment, by ch. 160, in subsection (6), in the third paragraph, substituted “November 10” for “October 15” in the first sentence, added the last two sentences, and added the last paragraph.

### **Compiler’s Notes.**

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

### **Effective Dates.**

Section 2 of S.L. 1963, ch. 211 provided that the act should take effect from and after July 1, 1963.

Section 2 of S.L. 1978, ch. 61 declared an emergency. Approved March 8, 1978.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law**

#### **Analysis**

[Authority of board.](#)

[Public function.](#)

[Wrongful payment.](#)

### **Authority of Board.**

Board of trustees had no authority, independent of state, to draw against funds appropriated in support of normal school. [Thomas v. State, 16 Idaho 81, 100 P. 761 \(1909\)](#), overruled on other grounds, [Grant Constr. Co. v. Burns, 92 Idaho 408, 443 P.2d 1005 \(1968\)](#).

### **Public Function.**

Officers of school district, in paying out funds of district, exercised a public function and acted for district only in a public and governmental capacity. [Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co., 50 Idaho 711, 4 P.2d 342 \(1931\)](#).

### **Wrongful Payment.**

Any acts of negligence, misconduct, mistake, or omissions on part of officers of school district in paying out funds of district could not estop district from maintaining action to recover back money wrongfully taken. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

**33-702. School warrants — How drawn.** — Whenever the board of trustees has approved and ordered payment of salaries, wages, or other claims against the school district, and the same is not paid by regular bank check, the clerk of the board of trustees shall issue a school district warrant, or order for warrant drawn against the appropriate fund, and shall sign the same.

The clerk of the board of trustees of any elementary school district with less than six (6) teachers within the district shall execute an order for warrant or warrants in duplicate, and present the same to the county auditor of the county, or of the home county, in which the district lies. The county auditor shall thereupon issue his warrant drawn against the school district fund as shown by the order for warrant.

All warrants so issued shall be presented to the treasurer of the school district for payment by the persons holding the same. If there is insufficient money to the credit of the fund on which the warrant is drawn, the treasurer shall endorse on the back of said warrant, “Not paid for want of funds” and hand the same to the person presenting the warrant for payment. Warrants so endorsed by the treasurer shall bear interest at a rate to be specified by the board of trustees of the school district.

Warrants issued by, or in behalf of, any school district shall be paid in the order of their issuance from funds accruing for the year in which they are issued. After all outstanding indebtedness for general school purposes for any one (1) year has been paid, any balance in the general school fund for that year shall be transferred to a warrant redemption fund for payment of any registered warrants. Where there is no outstanding indebtedness for general school purposes, nor any registered warrants, any such balance may be used for the payment of current expenses for the next fiscal year.

### **History.**

1963, ch. 13, § 67, p. 27; am. 1975, ch. 108, § 1, p. 220; am. 1978, ch. 103, § 4, p. 210; am. 1979, ch. 5, § 1, p. 7; am. 1980, ch. 61, § 4, p. 118.

## **STATUTORY NOTES**

## **Cross References.**

Nonpayment of warrants for want of funds, indorsement, interest rate, §§ 31-2124, 31-2125.

## **Effective Dates.**

Section 2 of S.L. 1975, ch. 108, declared an emergency. Approved March 24, 1975.

Section 2 of S.L. 1979, ch. 5 declared an emergency. Approved February 23, 1979.

Section 14 of S.L. 1980, ch. 61 declared an emergency. Approved March 11, 1980.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law Analysis**

**Forgery.**

**Issuance of warrant.**

**Forgery.**

Information charging forgery of order for issuance of warrant chargeable against funds of school district held sufficient. *Ex parte Lowe*, 50 Idaho 602, 298 P. 940 (1931).

**Issuance of Warrant.**

Order by school district was prerequisite to issuance of warrant on county treasurer against school district's funds. *Common School Dist. No. 27 v. Twin Falls Nat'l Bank*, 50 Idaho 668, 299 P. 662 (1931).

No presumption existed that county auditor had returned order, directing him to issue warrant against school fund, to school district, where auditor had not testified that he received order from district. *Common School Dist. No. 27 v. Twin Falls Nat'l Bank*, 50 Idaho 668, 299 P. 662 (1931).



**33-703. Call of warrants for payment.** — The treasurer of each school district, on the first Monday of each month on which there is sufficient money in the treasury to pay any outstanding warrants, shall issue a call for the warrants which such moneys will pay. In elementary school districts the call shall be made by posting a list of the warrants called, designating each warrant by number, amount, and person to whom issued, together with a notice that said warrants are called for payment, at the front door of the county courthouse. In all other districts the call shall be made by posting such notice on or near the main door of the administrative offices of the district. The treasurer shall execute a certificate of the posting of such notice showing the date and place of posting, and file it, together with a copy of the notice posted, in the permanent files of his office. All warrants so called shall cease to bear interest at the expiration of ten (10) days from the date of posting such notice of call.

**History.**

1963, ch. 13, § 68, p. 27.

**33-704. Warrants not presented within two years void.** — All school district warrants not presented for payment within two (2) years after being called shall be void and shall constitute no claim against the school district by which they were issued, and the treasurers of all school districts are hereby authorized to transfer any moneys set aside for the payment of such warrants to the general school fund of their districts at the expiration of such period, and no treasurer of any school district shall pay any warrant not presented within such two (2) year period. When any such transfer is made by the treasurer of any elementary district, a certificate of such transfer shall be filed with the county auditor.

**History.**

1963, ch. 13, § 69, p. 27.

**33-705. Activity funds.** — 1. The board of trustees of each school district, including specially chartered districts, shall create a fund or funds for the purpose of controlling and accounting for the receipts, deposits, expenditures, assets, liabilities and fund balances arising from the following transactions:

- (a) Admission charges for interscholastic activities.
- (b) The sale of yearbooks and annuals.
- (c) Student fee collections which are used to provide more than one (1) activity or benefit to all of the students of a school or school building.
- (d) Receipts from vending machines located on school property.

2. For each fund created the board of trustees shall promulgate policies:

- (a) Describing with reasonable certainty the nature and type of expenditures which may be made therefrom.
- (b) Setting forth the requirements for the expenditures and withdrawal of such moneys.

3. The treasurer of the district shall provide accounting procedures for the receipt, deposit, expenditure and withdrawal of such moneys and procedures for monthly reporting to the board of trustees of the transactions, assets, liabilities and fund balance for each such fund.

4. For other activity or student funds including, but not limited to, custodial funds, the board of trustees may create a separate fund or funds and promulgate policies to provide for accounting and control thereof.

5. Nothing in this section limits the power of the board of trustees of any school district from promulgating policies or imposing further controls, requirements, accounting and reporting procedures with respect to any funds or moneys of the district or moneys which it holds as custodian for the students.

6. Disbursements from any of the funds created under this section shall be made by regular bank check signed by the treasurer or assistant treasurer of the district and countersigned by the chairman or vice chairman of the

board of trustees or other employee of the district designated by the board of trustees.

**History.**

I.C., § 33-705, as added by 1990, ch. 198, § 3, p. 443; am. 1999, ch. 165, § 1, p. 452.



## **CHAPTER 8**

### **BUDGET AND TAX LEVY**

#### **Section.**

33-801. School district budget.

33-801A. General fund contingency reserve.

33-802. School levies.

33-802A. Computation of bond and bond interest levies.

33-803. Levy for education of children of migratory farm workers.

33-804. School plant facilities reserve fund levy.

33-804A. School plant facilities reserve fund levy for safe school facilities.

33-805. School emergency fund levy.

33-806. School special assistance levy. [Repealed.]

33-807. Certification of levies.

33-808. Notice of adjustment to market value for assessment purposes upon termination of a revenue allocation area.

**33-801. School district budget.** — No later than twenty-eight (28) days or, if the conditions provided for in section 33-804(4), Idaho Code, have been met, fourteen (14) days prior to its regular July meeting, the board of trustees of each school district shall have prepared a budget, in form prescribed by the state superintendent of public instruction, and shall have called and caused to be held a public hearing thereon, and at such public hearing, or at a special meeting held no later than fourteen (14) days after the public hearing, shall adopt a budget for the ensuing year. Notice of the hearing shall be posted, and published as prescribed in section 33-402, Idaho Code, and a record of the hearing shall be kept by the clerk of the board of trustees. At the time said notice is given and until the date of the hearing, a copy of the budget shall be available for public inspection at all reasonable times at the administrative offices of the school district, or at the office of the clerk of the district. The board of trustees of each school district shall also prepare and publish, as a part of such notice, a summary statement of the budget for the current and ensuing years. Such statement shall be prepared in a manner consistent with standard accounting practices and in such form as the state superintendent of public instruction shall prescribe, and, among other things, said statement shall show amounts budgeted for all major classifications of income and expenditures, with total amounts budgeted for salary and wage expenditures in each such classification shown separately. Such statement shall show amounts actually expended for the two (2) previous years for the same classification for purposes of comparison. The budgeted dollar amounts of revenue in those categories included within the provisions of section 33-802, Idaho Code, as approved within the adopted budget shall be the same as presented to the respective county commissioners for tax levy purposes.

### **History.**

1963, ch. 13, § 90, p. 27; am. 1963, ch. 348, § 1, p. 986; am. 1973, ch. 62, § 2, p. 102; am. 1975, ch. 46, § 1, p. 85; am. 1978, ch. 158, § 1, p. 346; am. 1985, ch. 107, § 5, p. 191; am. 1989, ch. 2, § 1, p. 3; am. 1997, ch. 175, § 1, p. 494; am. 2009, ch. 171, § 5, p. 541; am. 2011, ch. 299, § 2, p. 853; am. 2018, ch. 164, § 6, p. 322.

## STATUTORY NOTES

### Cross References.

State superintendent of public instruction, § 67-1501 et seq.

### Amendments.

The 2009 amendment, by ch. 171, inserted “or, if a financial emergency has been declared pursuant to [section 33-522, Idaho Code](#), fourteen (14) days” in the first sentence.

The 2011 amendment, by ch. 299, substituted “the conditions provided for in [section 33-804\(4\), Idaho Code](#), have been met” for “a financial emergency has been declared pursuant to [section 33-522, Idaho Code](#)” near the beginning of the section.

The 2018 amendment, by ch. 164, substituted “(14) days prior to its regular July meeting” for “(14) days prior to its annual meeting” near the beginning of the first sentence.

### Compiler’s Notes.

Section 1 of S.L. 2011, ch. 299 provided: “The provisions of [Section 33-1019, Idaho Code](#), notwithstanding, for the period July 1, 2011, through June 30, 2012, only, the current fiscal year’s amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows: “(1) Subtract from the local maintenance match requirement all plant facility levy funds levied for tax year 2011.

“(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building.



“School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education.”

Section 1 of S.L. 2013, ch 300 provided: “The provisions of [Section 33-1019, Idaho Code](#), notwithstanding, for the period July 1, 2013, through June 30, 2014, only, two-thirds (2/3) of the current fiscal year’s amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows: “(1) Subtract from two-thirds (2/3) of the local maintenance match requirement two-thirds (2/3) of all plant facility levy funds levied for tax year 2012.

“(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building. School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education.”

### **Effective Dates.**

Section 2 of S.L. 1963, ch. 348 provided that the act should take effect from and after July 1, 1963.

Section 2 of S.L. 1978, ch. 158 declared an emergency. Approved March 20, 1978.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

Section 5 of S.L. 2011, ch 299 declared an emergency. Approved April 11, 2011.

## **JUDICIAL DECISIONS**

**Cited in:** [Muench v. Paine, 93 Idaho 473, 463 P.2d 939 \(1970\).](#)

## Decisions Under Prior Law

### Analysis

Mandatory requirements.

Purpose of statute.

Requirements of section.

#### **Mandatory Requirements.**

It was mandatory on the trustees that they prepare and submit a budget of expenditures of the past year and their estimate of the requirements for the coming year. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

#### **Purpose of Statute.**

The former statute requiring preparation of budget was enacted for the information of the electors present at the annual meeting, in order that they have had an opportunity to compare the proposed budget with the expenditures of the past year and to aid in determining the necessity and wisdom of making the proposed expenditures. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

#### **Requirements of Section.**

A minute and detailed statement of all possible expenses for teachers' salaries, each kind of material, equipment, labor, taxes and insurance that may be required for a school district was required under the former section governing the school district budget. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

**33-801A. General fund contingency reserve.** — The board of trustees of any school district may create and establish a general fund contingency reserve within the annual school district budget. Such general fund contingency reserve shall not exceed five per cent (5%) of the total general fund budget, or the equivalent value of one (1) support unit computed as required by section 33-1002, Idaho Code, whichever is greater. Disbursements from said fund may be made by resolution from time to time as the board of trustees determines necessary for contingencies that may arise. The balance of said fund shall not be accumulated beyond the budgeted fiscal year. If any money remains in the contingency reserve it shall be treated as an item of income in the following year's budget.

**History.**

**I.C., § 33-801A**, as added by 1977, ch. 197, § 1, p. 533; am. 1981, ch. 138, § 1, p. 241; am. 1986, ch. 44, § 1, p. 129.

**33-802. School levies.** — Any tax levied for school purposes shall be a lien on the property against which the tax is levied. The board of trustees shall determine the levies upon each dollar of taxable property in the district for the ensuing fiscal year as follows:

(1) Bond, Interest and Judgment Obligation Levies. Such levies as shall be required to satisfy all maturing bond, bond interest, and judgment obligations.

(2) Budget Stabilization Levies. School districts not receiving state equalization funds in fiscal year 2006 may authorize a budget stabilization levy for calendar year 2006 and each year thereafter. Such levies shall not exceed the difference between the amount of equalized funds that the state department of education estimates the school district will receive in fiscal year 2007, based on the school district's fiscal year 2006 reporting data, and the combined amount of money the school district would have received from its maintenance and operation levy and state property tax replacement funds in fiscal year 2007 under the laws of the state of Idaho as they existed prior to amendment by the first extraordinary session of the fifty-eighth Idaho legislature. The state department of education shall notify the state tax commission and affected counties and school districts of the maximum levy amounts permitted, by no later than September 1, 2006.

(3) Supplemental Maintenance and Operation Levies. No levy in excess of the levy permitted by this section shall be made by a noncharter district unless such a supplemental levy in a specified amount and for a specified time not to exceed two (2) years be first authorized through an election held subject to the provisions of [section 34-106, Idaho Code](#), and pursuant to title 34, Idaho Code, and approved by a majority of the district electors voting in such election. A levy approved pursuant to this subsection may be reduced by a majority vote of the board of trustees in the second year.

(4) Charter District Supplemental Maintenance and Operation. Levies pursuant to the respective charter of any such charter district shall be first authorized through an election held subject to the provisions of [section 34-106, Idaho Code](#), and pursuant to title 34, Idaho Code, and approved by a majority of the district electors voting in such election.

(5) The board of trustees of any school district that has, for at least seven (7) consecutive years, been authorized through an election held to certify a supplemental levy that has annually been equal to or greater than twenty percent (20%) of the total general maintenance and operation fund, may submit the question of an indefinite term supplemental levy to the electors of the school district. Such question shall clearly state the dollar amount that will be certified annually and that the levy will be for an indefinite number of years. The question must be approved by a majority of the district electors voting on the question in an election held subject to the provisions of [section 34-106, Idaho Code](#), and pursuant to title 34, Idaho Code. The levy approved pursuant to this subsection may be reduced by a majority vote of the board of trustees during any fiscal year.

(6) A charter district may levy for maintenance and operations if such authority is contained within its charter. In the event property within a charter district's boundaries is contained in a revenue allocation area established under chapter 29, title 50, Idaho Code, and such revenue allocation area has given notice of termination thereunder, then, only for the purpose of determining the levy described in this subsection, the district may add the increment value, as defined in [section 50-2903, Idaho Code](#), to the actual or adjusted market value for assessment purposes of the district as such value existed on December 31 of the previous year.

### **History.**

1963, ch. 13, § 91, p. 27; am. 1963, ch. 422, § 1, p. 1097; am. 1970, ch. 61, § 1, p. 149; am. 1973, ch. 296, § 1, p. 620; am. 1979, ch. 254, § 2, p. 661; am. 1980, ch. 390, § 3, p. 990; am. 1981, ch. 224, § 1, p. 433; am. 1983, ch. 235, § 1, p. 639; am. 1987, ch. 52, § 1, p. 85; am. 1987, ch. 273, § 1, p. 566; am. 1988, ch. 344, § 1, p. 1021; am. 1989, ch. 8, § 1, p. 9; am. 1991, ch. 313, § 1, p. 820; am. 1995, ch. 26, § 1, p. 33; am. 1996, ch. 322, § 20, p. 1029; am. 2005, ch. 191, § 1, p. 591; am. 2006 (1st E.S.), ch. 1, § 3; am. 2009, ch. 341, § 45, p. 993.

## **STATUTORY NOTES**

### **Cross References.**

Bonds, levy by county commissioners, § 33-1114.

County commissioners, tax levy, § 33-1011.

Migratory farm workers, levy for education of children, § 33-803.

School emergency fund levy, § 33-805.

School plant facilities reserve fund levy, § 33-804.

State tax commission, § 63-101 et seq.

### **Amendments.**

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted present Paragraph (2) for the former paragraph, which related to maximum school maintenance and operation levies, deleted former Paragraphs 3 and 6, which related to authorized school maintenance and operation levies and local district contributions, added present Paragraph (6), and renumbered the remaining paragraphs accordingly.

The 2009 amendment, by ch. 341, in subsections (3) through (5), inserted “subject to the provisions of [section 34-106, Idaho Code](#)” and substituted “title 34, Idaho Code” for “chapter 4, title 33, Idaho Code.”

### **Legislative Intent.**

Section 25 of S.L. 2006 (1st E.S.), ch. 1, provides: “The Legislature finds and declares that the issue of the property tax funding maintenance and operations of public schools is of importance to the citizens of the state of Idaho. As a representative body, members of the Legislature desire to be responsive and responsible to these citizens. For this reason, the Legislature herewith submits an advisory ballot to the electors of the state of Idaho, and the results will guide the Legislature as to whether the three-tenths of one percent property tax previously contained in [Section 33-802, Idaho Code](#), and levied against the market value of taxable property in the school districts for maintenance and operation purposes of school districts should continue to be removed and the funds be replaced by a sufficient increase in the state sales tax.

“The Secretary of State shall have the question below placed on the 2006 general election ballot and shall take necessary steps to have the results on the question tabulated. The question shall be as follows: ‘Should the State of Idaho keep the property tax relief adopted in August 2006, reducing

property taxes by approximately \$260 million and protecting funding for public schools by keeping the sales tax at 6%?’. ”

“The advisory question provided for in this act is hereby declared to be a ‘measure’ for purposes of Chapter 66, Title 67, Idaho Code, and the provisions of Chapter 66, Title 67, Idaho Code, shall apply thereto.”

The advisory question was answered in the affirmative by the voters in the 2006 general election.

### **Compiler’s Notes.**

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

### **Effective Dates.**

Section 2 of S.L. 1970, ch. 61 declared an emergency. Approved February 25, 1970.

Section 4 of S.L. 1973, ch. 296 read: “An emergency existing therefor, which emergency is hereby declared to exist, sections 1 and 2 of this act shall be in full force and effect on and after the passage and approval of this act, and retroactively to January 1, 1973. Section 3 of this act shall be in full force and effect on and after July 1, 1973.” Approved March 15, 1973.

Section 4 of S.L. 1980, ch. 390 declared an emergency and stated that the act would take effect on and after its passage and approval and retroactively to January 1, 1980. Approved April 10, 1980.

Section 2 of S.L. 1983, ch. 131 declared an emergency. Approved April 4, 1983.

Section 3 of S.L. 1983, ch. 235 declared an emergency and provided that the act should be in full force and effect retroactive to January 1, 1983. Approved April 13, 1983.

Section 3 of S.L. 1988, ch. 344 read: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1988.” Approved April 6, 1988.

Section 2 of S.L. 1991, ch. 313, declared an emergency. Approved April 4, 1991.

Section 7 of S.L. 1995, ch. 26 declared an emergency and provided that sections 1, 2, 4, 5 and 6 of this act shall be in full force and effect on and after February 16, 1995, and retroactively to January 1, 1995. Approved February 16, 1995.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

## **JUDICIAL DECISIONS**

### **Analysis**

**Ad valorem property tax.**

**Constitutionality.**

**Notice of election.**

### **Ad Valorem Property Tax.**

The state's system of public school financing, in which per pupil expenditures vary among the school districts as a result of variations in the districts' assessed valuations for purposes of an ad valorem property tax, does not deny equal protection of the law to nor discriminate against students in less affluent school districts with low expenditures. *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

### **Constitutionality.**

This section's treatment of chartered school districts differently than nonchartered school districts in their respective powers to levy additional taxes to fund education is blatantly discriminatory and deserving of an intermediate standard of scrutiny. *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993).

### **Notice of Election.**

This section does not specifically mention "building purposes" as an authorized use of funds raised pursuant to this section, but the definition of "building purposes" contained in the caselaw is broad enough to include other purposes authorized by the statute and yet would include purposes prohibited by both the statute and the constitution; therefore, because of this broad definition, the court could not say as a matter of law that the term



“building purposes” invalidated the notice of election. *Lind v. Rockland Sch. Dist.*, 120 Idaho 928, 821 P.2d 983 (1991).

The notice of election published by the school district for the purpose of giving notice of a supplemental levy satisfied the requirement of § 33-402. *Lind v. Rockland Sch. Dist.*, 120 Idaho 928, 821 P.2d 983 (1991).

**Cited in:** *Muench v. Paine*, 93 Idaho 473, 463 P.2d 939 (1970).

## Decisions Under Prior Law

### Analysis

Appeals.

Assumption of constitutionality.

Certification by trustees.

Clerical function of commissioners.

Compliance with statute.

Constitutionality.

Duty to pay judgments.

Jurisdictional aspects of levy.

Legislative intent.

Levy defined.

Necessity of purpose.

Notice.

Section inapplicable to extraordinary debts.

Uniformity of levy.

**Appeals.**

Appeal could be taken from order of board making a levy of taxes. *Fenton v. Board of Comm’rs*, 20 Idaho 392, 119 P. 41 (1911). See also *Dart v. Board of County Comm’rs*, 20 Idaho 445, 119 P. 52 (1911); *Coon v. Sommercamp*, 26 Idaho 776, 146 P. 728 (1915).

**Assumption of Constitutionality.**

The supreme court would assume in favor of the constitutionality of a statute that the purpose of providing for levy of special tax on unorganized school districts was to provide revenue for the payment of tuition for children of school age residing in the districts. *Scandrett v. Shoshone County*, 63 Idaho 46, 116 P.2d 225 (1941).

### **Certification by Trustees.**

Special school tax had to be levied by electors at annual meeting and should have been certified by board of trustees to board of county commissioners as so levied. *Smith v. Canyon County*, 39 Idaho 222, 226 P. 1070 (1924).

### **Clerical Function of Commissioners.**

Board of county commissioners could not levy special school tax, as its functions were purely clerical or ministerial. *Smith v. Canyon County*, 39 Idaho 222, 226 P. 1070 (1924).

### **Compliance with Statute.**

Unanimous vote of electors of common school district at annual meeting fixing total budget for maintenance of school during ensuing year was held to be a substantial compliance with the former statute requiring electors to vote levy of special tax for the maintenance of school during the ensuing year, so as to require certification of such levy to county commissioners by trustees. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

### **Constitutionality.**

The former statute purporting to require the levy of a special three-mill tax in unorganized school districts irrespective of the number of school children therein, and to provide for the turning of the money so raised over to the county at large to be placed in the county treasury to the credit of the county school fund, was unconstitutional because it attempted to levy a special tax on unorganized school districts only, without extending such tax to all of the same class of subjects within the territorial limits of the authority levying the tax, and because it attempted to authorize county commissioners as trustees of unorganized school districts to raise the legislative levy above three mills and to turn the money received therefrom

into the general county school fund. *Scandrett v. Shoshone County*, 63 Idaho 46, 116 P.2d 225 (1941).

### **Duty to Pay Judgments.**

The former section governing general school levies recognized the necessity that school districts meet and pay their judgment obligations. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

Judgment in favor of certain school districts for specified sums against certain other school districts for moneys resulting from misapportionment of school funds, providing for the payment thereof out of future apportionments and taxes, directing the levying of taxes for payment thereof, and retaining jurisdiction to enforce the judgment, was within general powers of a court of equity and authorized by statute. *Independent Sch. Dist. No. 1 v. Common Sch. Dist. No. 1*, 56 Idaho 426, 55 P.2d 144 (1936).

### **Jurisdictional Aspects of Levy.**

Statutory requirements for levying of a special tax by a school district were jurisdictional. *Petrie v. Common School Dist. No. 5*, 38 Idaho 583, 223 P. 535 (1924).

### **Legislative Intent.**

The intent of the legislature to vest exclusive power in the annual meeting, instead of the board, to pass upon the budget was emphasized by the former section governing general school levies which vested power in the board to levy a special tax only when the annual meeting neglected or refused to do so. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

### **Levy Defined.**

“Levy,” defining duty of county commissioners, denoted mere ministerial act of computing and extending a tax according to an assessment, as distinguished from its other meaning referring to legislative function of determining amount of money to be raised by taxation. *Northern P.R.R. v. Chapman*, 29 Idaho 294, 158 P. 560 (1916).

### **Necessity of Purpose.**

Where there were no children of school age within an unorganized school district and no outstanding claims, the statutory purpose of providing for levy of special tax on unorganized school districts never arose, and there could be no lawful tax, since there was no lawful purpose, and the people could not be taxed except for a lawful purpose. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941).

### **Notice.**

The former section authorized trustees to fix tax levies up to a stated limit, for levies above that limit an election was to be called; the only notice required was when the board exceeded the limit of the levy authorized; no notice was required when a levy was within the authorized limits. *Wellard v. Marcum*, 82 Idaho 232, 351 P.2d 482 (1960).

### **Section Inapplicable to Extraordinary Debts.**

Former law providing for levy of a special tax for the construction or maintenance of school property was inapplicable to indebtedness of an extraordinary character, such as debt of school district to be assumed by an adjoining school district upon the division of the former between two counties. *Independent Sch. Dist. No. 12 v. Manning*, 32 Idaho 512, 185 P. 723 (1919).

### **Uniformity of Levy.**

The tax levied by the board of county commissioners, for general school purposes, had to be uniform on all taxable property throughout the county, whereas tax levied by school districts needed to be uniform only on all taxable property within the particular district which made the levy. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941).

## **RESEARCH REFERENCES**

**A.L.R.** — Garage or parking lot as within tax exemption extended to property or educational, charitable or hospital organizations. 33 A.L.R.3d 938.

Validity of basing public school financing system on local property taxes. 41 A.L.R.3d 1220.

**33-802A. Computation of bond and bond interest levies.** — When the board of trustees of any school district determines and makes a levy allowed by section 33-802, Idaho Code, and incorporates such levy as a part of the school district's budget to service all maturing bond and bond interest payments for the ensuing fiscal year, it shall take into consideration any state bond levy equalization funds provided pursuant to section 33-906, Idaho Code, and any balances remaining or that may remain in its bond interest and redemption fund after meeting its bond and bond interest obligations for its current fiscal year. The levy so made for the ensuing fiscal year shall be an amount which, together with any state bond levy equalization funds provided pursuant to section 33-906, Idaho Code, and the balance in its bond interest and redemption fund remaining after meeting its current fiscal year bond and bond interest obligations, shall satisfy all maturing bond and bond interest payments for at least the ensuing twelve (12) months, and not to exceed the ensuing twenty-one (21) months counted from July 1 of the current calendar year.

**History.**

**I.C., § 33-802A**, as added by 1973, ch. 282, § 1, p. 597; reen. 1974, ch. 4, § 1, p. 20; am. 1974, ch. 171, § 1, p. 1430; am. 2002, ch. 159, § 1, p. 464; am. 2003, ch. 268, § 1, p. 717; am. 2006 (1st E.S.), ch. 1, § 4.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “a levy allowed by section 33-802” for “the levy required by section 33-802” near the beginning of the first sentence.

**Compiler's Notes.**

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

**Effective Dates.**

Section 4 of S.L. 1973, ch. 282 declared an emergency. Approved March 16, 1973.

Section 2 of S.L. 1974, ch. 171, provided the act should be in full force and effect on and after July 1, 1974.

**33-803. Levy for education of children of migratory farm workers. —**

In any school district in which there is located any farm labor camp and the children of migratory farm workers housed therein attend the schools of the district, the board of trustees may make a levy not exceeding one-tenth of one percent (.1%) of the market value for assessment purposes on all taxable property within the district, in addition to any other levies authorized by law, for the cost of educating such children.

Whenever the aggregate of the levy herein authorized and other levies made for maintenance and operation of the district shall exceed six-tenths of one percent (.6%) of the market value for assessment purposes on all taxable property within the district, the levy authorized by this section must be approved by the school district electors at a tax levy election held for that purpose. Notice of such election shall be given, the election shall be conducted, and the returns thereof made, as provided in title 34, Idaho Code; and the question shall be approved only if a majority of the qualified electors voting at such election vote in favor thereof.

**History.**

1963, ch. 13, § 92, p. 27; am. 1995, ch. 82, § 11, p. 218; am. 2009, ch. 341, § 46, p. 993.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 341, in the first paragraph, substituted “one-tenth of one percent” for “one tenth percent”; and, in the last paragraph, substituted “six-tenths of one percent” for “six tenths percent” in the first sentence, substituted “title 34, Idaho Code” for “[sections 33-401 through 33-406, Idaho Code](#)” in the last sentence, and deleted the former last sentence, which read: “If the election be held in conjunction with any other school election, the question herein shall be submitted by separate ballot.”

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**33-804. School plant facilities reserve fund levy.** — In any school district in which a school plant facilities reserve fund has been created, either by resolution of the board of trustees or by apportionment to new districts according to the provisions of section 33-901, Idaho Code, to provide funds therefor the board of trustees shall submit to the qualified school electors of the district the question of a levy not to exceed four-tenths of one percent (.4%) of market value for assessment purposes in each year, as such valuation existed on December 31 of the previous year, for a period not to exceed ten (10) years.

The question of a levy to be submitted to the electors of the district and the notice of such election shall state the dollar amount proposed to be collected each year during the period of years in each of which the collection is proposed to be made, the percentage of votes in favor of the proposal which are needed to approve the proposed dollar amount to be collected, and the purposes for which such funds shall be used. Said notice shall be given, the election shall be held subject to the provisions of [section 34-106, Idaho Code](#), and conducted and the returns canvassed as provided in title 34, Idaho Code; and the dollar amount to be collected shall be approved only if:

1. Fifty-five percent (55%) of the electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities and bonded indebtedness of less than two-tenths of one percent (.2%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election;

2. Sixty percent (60%) of the electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities and bonded indebtedness of two-tenths of one percent (.2%) or more and less than three-tenths of one percent (.3%) of market value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election; or

3. Two-thirds (2/3) of the electors voting in such election are in favor thereof if the levy will result in a total levy for school plant facilities and bonded indebtedness of three-tenths of one percent (.3%) or more of market

value for assessment purposes as such valuation existed on December 31 of the year immediately preceding the election.

If the question be approved, the board of trustees may make a levy, not to exceed four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, in each year for which the collection was approved, sufficient to collect the dollar amount approved and may again submit the question at the expiration of the period of such levy, for the dollar amount to be collected during each year, and the number of years which the board may at that time determine. Or, during the period approved at any such election, if such period be less than ten (10) years or the levy be less than four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, the board of trustees may submit to the qualified school electors in the same manner as before, the question whether the number of years, or the levy, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect.

Any bonded indebtedness incurred in accordance with the provisions of [section 33-1103, Idaho Code](#), subsequent to the approval of a plant facilities reserve fund levy shall not affect the terms of that levy for any time during which such levy is in effect.

4. In any fiscal year in which the state department of education certifies that the statewide per support unit funding for salary-based apportionment and discretionary funds has decreased, in the aggregate, from the prior fiscal year, the board of trustees of any school district with a previously approved plant facilities levy may submit to the qualified electors of the school district the question of converting a previously approved plant facilities levy to a supplemental levy, subject to the following:

- (a) The term of the supplemental levy shall not exceed the lesser of two (2) years or the remaining term on the previously approved plant facilities levy; and
- (b) The first tax year of conversion shall be the one in which the revenues collected will accrue to the fiscal year in which the state department of

education certifies that the condition stated in subsection 4. of this section exists; and

(c) Up to one hundred percent (100%) of the previously approved plant facilities levy amount may be converted; and

(d) Conversion of a plant facilities levy to a supplemental levy shall not affect any other supplemental levy; and

(e) The question to be submitted to the electors of the district and the notice of such election shall state the dollar amount proposed to be converted each year, the number of years to be converted, the percentage of the plant facilities levy that is proposed for conversion, and the purposes for which such funds shall be used; and

(f) Prior to January 1, 2011, the election notice shall be given, the election shall be conducted and the returns canvassed as provided in chapter 4, title 33, Idaho Code. On and after January 1, 2011, the election notice shall be given, the election shall be held subject to the provisions of [section 34-106, Idaho Code](#), and conducted and the returns canvassed as provided in title 34, Idaho Code; and

(g) The dollar amount to be converted and collected shall be approved only if a majority of the electors voting in the election are in favor; and

(h) Upon expiration of the term of conversion, the supplemental levy shall revert to the previously approved plant facilities levy for any approved years remaining on the balance of its term; and

(i) Any years in which a previously approved plant facilities levy is converted to a supplemental levy pursuant to this subsection shall count against the years for which the plant facilities levy was approved; and

(j) If a majority of the electors voting in the election fail to vote in favor, the previously approved plant facilities levy shall not be affected.

### **History.**

1963, ch. 13, § 93, p. 27; am. 1970, ch. 115, § 1, p. 276; am. 1975, ch. 220, § 1, p. 612; am. 1979, ch. 254, § 3, p. 661; am. 1981, ch. 224, § 2, p. 433; am. 1987, ch. 256, § 4, p. 519; am. 1992, ch. 276, § 1, p. 850; am. 1994, ch. 299, § 1, p. 946; am. 1996, ch. 322, § 21, p. 1029; am. 2009, ch.

341, § 47, p. 993; am. 2010, ch. 326, § 2, p. 863; am. 2011, ch. 299, § 3, p. 853.

## STATUTORY NOTES

### Cross References.

School plant facilities reserve fund, § 33-901.

### Amendments.

The 2009 amendment, by ch. 341, in the last sentence in the second paragraph, inserted “held subject to the provisions of [section 34-106, Idaho Code](#), and” and substituted “title 34, Idaho Code” for “chapter 4, title 33, Idaho Code.”

The 2010 amendment, by ch. 326, added subsection 4.

The 2011 amendment, by ch. 299, substituted “per support unit funding for salary-based apportionment and discretionary funds has decreased, in the aggregate, from the prior fiscal year” for “conditions exist for all qualifying school districts to declare financial emergencies, pursuant to [section 33-522, Idaho Code](#)”, in the introductory paragraph of subsection 4. and substituted “the condition stated in subsection 4. of this section exists” for “the statewide conditions exist for all qualifying school districts to declare financial emergencies, pursuant to [section 33-522, Idaho Code](#)” in paragraph 4.(b).

### Compiler’s Notes.

Section 1 of S.L. 2011, ch. 299 provided: “The provisions of [Section 33-1019, Idaho Code](#), notwithstanding, for the period July 1, 2011, through June 30, 2012, only, the current fiscal year’s amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

“(1) Subtract from the local maintenance match requirement all plant facility levy funds levied for tax year 2011.

“(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building. School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education.”

“School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education.”

Section 4 of S.L. 2011, ch. 299 provided “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Section 1 of S.L. 2013, ch 300 provided: “The provisions of [Section 33-1019, Idaho Code](#), notwithstanding, for the period July 1, 2013, through June 30, 2014, only, two-thirds (2/3) of the current fiscal year’s amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

“(1) Subtract from two-thirds (2/3) of the local maintenance match requirement two-thirds (2/3) of all plant facility levy funds levied for tax year 2012.

“(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building. School districts shall furnish information

pursuant to the provisions of this section, as may be required by the State Department of Education.”

**Effective Dates.**

Section 2 of S.L. 1975, ch. 220 declared an emergency. Approved March 28, 1975.

Section 7 of S.L. 1981, ch. 224 declared an emergency and provided that all sections of the act, except section 2, should be in full force and effect retroactive to January 1, 1981 and that section 2 should be in full force and effect July 1, 1981. Approved April 6, 1981.

Section 5 of S.L. 1987, ch. 256 (approved April 1, 1987 at 9:45 AM) declared an emergency. However, that section was repealed by § 1 of S.L. 1987, ch. 25 (approved April 1, 1987 at 2:50 PM).

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 6 of S.L. 2010, ch. 326 provided that the act should take effect on and after January 1, 2011

Section 5 of S.L. 2011, ch 299 declared an emergency. Approved April 11, 2011.

**33-804A. School plant facilities reserve fund levy for safe school facilities.** — (1) Definition. As used in this section, public school facilities mean the physical plant of improved or unimproved real property owned or operated by a school district, including school buildings, administration buildings, playgrounds, athletic fields, etc., used by schoolchildren or school district personnel in the normal course of providing a general, uniform and thorough system of public, free common schools, but does not include areas, buildings or parts of buildings closed from or not used in the normal course of providing a general, uniform and thorough system of public, free common schools. The aspects of a safe environment conducive to learning as provided by section 33-1612, Idaho Code, that pertain to the physical plant used to provide a general, uniform and thorough system of public, free common schools are hereby defined as those necessary to comply with the safety and health requirements set forth in this section.

(2) Whenever under applicable law a board of trustees of a school district has identified on the basis of an independent inspection of the district's school facilities that some of those school facilities fail to comply with codes addressing safety and health standards for facilities (including electrical, plumbing, mechanical, elevator, fire safety, boiler safety, life safety, structural, snow loading, and sanitary codes) adopted by or pursuant to the Idaho uniform school building safety act, chapter 80, title 39, Idaho Code, adopted by the state fire marshal, adopted by generally applicable local ordinances, or adopted by rule of the state board of education and applicable to school facilities, and that those school facilities that do not comply with codes addressing unsafe or unhealthy conditions contain unsafe or unhealthy conditions that cannot be abated with the school district's income from current sources, that school district shall be eligible to participate in the Idaho safe schools facilities loan program administered by Idaho banks. Eligibility to participate in the Idaho safe schools facilities loan program shall not affect or disqualify any school district from eligibility to participate in any other program to abate unsafe or unhealthy conditions.

(3) In any school district in which a school plant facilities reserve fund has been created, the period for which the school plant facilities reserve

fund levy may be in effect may extend beyond ten (10) years but not to exceed twenty (20) years, provided that: (a) The board of trustees shall determine that all or a portion of the amount to be collected each year during the period of years in which the levy is collected is made to abate, repair or replace school facilities with unsafe or unhealthy conditions.

(b) The question of the levy to be submitted to the electors of a district and the notice of such election shall state the dollar amount proposed to be collected each year during the period of years in each of which the collection is to be made to abate, repair or replace school facilities for the purpose of providing buildings complying with codes defining safe and healthy conditions as required by applicable law.

(c) The election for such a levy conducted pursuant to this section shall be held on one (1) of the days authorized by [section 34-106, Idaho Code](#).

The provisions of [section 33-804, Idaho Code](#), that are not modified by this section shall apply to levies made pursuant to this section.

### **History.**

[I.C., § 33-804A](#), as added by 2000, ch. 344, § 2, p. 1165; am. 2001, ch. 326, § 1, p. 1143.

## **STATUTORY NOTES**

### **Cross References.**

State fire marshal, § 41-254.

### **Effective Dates.**

Section 3 of S.L. 2000, ch. 344 declared an emergency. Approved April 14, 2000.

Section 6 of S.L. 2001, ch. 326 declared an emergency. Approved April 4, 2001.



**33-805. School emergency fund levy.** — Before the second Monday of September in each year, the board of trustees of any school district which qualifies under the provisions of this section may certify its need hereunder to the board of county commissioners in each county in which the district may lie, and request a school emergency fund levy upon all taxable property in the district.

The board of trustees shall compute the number of pupils in average daily attendance in the schools of the district as of such date, and if there be pupils in average daily attendance above the number in average daily attendance for the same period of the school year immediately preceding the board shall: 1. Divide the total of the foundation program allowance based on said last annual report by the total number of pupils in average daily attendance shown thereon; 2. Multiply the quotient so derived by the number of additional pupils in average daily attendance.

The number of pupils in average daily attendance for each period and the amount so computed shall be certified to the board of county commissioners of the county in which the district lies.

In the case of a joint district, the board of trustees shall certify to the board of county commissioners of each county in which the district lies, to each, that proportion of the amount computed, as hereinabove, as the assessed value of taxable property within the district situate in each such county bears to the total assessed value of all taxable property in the district.

After receiving the amounts certified, as hereinabove provided, the board, or boards, of county commissioners shall determine the levy according to [section 63-805\(3\), Idaho Code](#), as amended; and the proceeds of any such levy shall be credited to the general fund of the district.

The school district shall advertise its intent to seek an emergency levy pursuant to this section by publishing in at least the newspaper of largest paid circulation published in the county of the district, or if there is no such newspaper, then in a newspaper published nearest to the district where the advertisement is required to be published. For purposes of this section, the

definition of “newspaper” shall be as established in sections 60-106 and 60-107, Idaho Code; provided further that the newspaper of largest circulation shall be established by the statement of average annual paid weekday circulation listed on the newspaper’s sworn statement of ownership that was filed with the United States post office on a date most recently preceding the date on which the advertisement required in this section is to be published. The advertisement shall be run when the school district ascertains that it will request an emergency school fund levy as provided in this section and shall be published once a week for two (2) weeks following action by the board of trustees.

The form and content of the notice shall be substantially as follows:  
**NOTICE OF PROPERTY TAX INCREASE BY SCHOOL BOARD**

The (name of the school district) has proposed to increase the amount of ad valorem tax dollars it collects by certifying a school emergency fund levy pursuant to [section 33-805, Idaho Code](#), for the period ..... to ..... . The total amount of dollars to be collected pursuant to this levy is estimated to be ..... . The amount of dollars to be collected pursuant to this levy on a typical home of \$50,000 taxable value of last year is estimated to be ..... . The amount of dollars to be collected pursuant to this levy on a typical farm of \$100,000 taxable [value of] last year is estimated to be ..... . The amount of dollars to be collected pursuant to this levy on a typical business of \$200,000 taxable value of last year is estimated to be ..... .

**CAUTION TO TAXPAYER:** The amounts shown in this schedule do NOT reflect tax charges that are made because of voter approved bond levies, override levies, supplemental levies, or levies applicable to newly annexed property. Also the amounts shown in this schedule are an estimate only and can vary with the amount of dollars and the levy amount certified and the taxable value of individual property.

### **History.**

1963, ch. 13, § 94, p. 27; am. 1963, ch. 311, § 1, p. 835; am. 1963, ch. 322, § 6, p. 919; am. 1971, ch. 30, § 1, p. 74; am. 1992, ch. 276, § 2, p. 850; am. 1996, ch. 322, § 22, p. 1029.

### **STATUTORY NOTES**

## **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

The bracketed insertion in the first paragraph of the Notice was added by the compiler to correct the 1992 amendment of this section.

## **Effective Dates.**

Section 5 of S.L. 1963, ch. 311, provided that the act should take effect from and after July 1, 1963.

Section 3 of S.L. 1992, ch. 276 declared an emergency. Approved April 8, 1992.

Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law**

#### **Analysis**

Property subject to levy.

Purpose of fund.

### **Property Subject to Levy.**

The county school emergency fund was to be raised by a tax levied upon all taxable property of the county, or by a tax levied upon the taxable property of the school district or districts which requested the levy to be made. *Board of Trustees v. Board of Comm'rs*, 83 Idaho 172, 359 P.2d 635 (1961).

### **Purpose of Fund.**

Under former statutes, the levy provided was authorized in order to provide funds with which to defray unanticipated expenses of educational and transportation programs brought about by the reason of increase in pupil attendance; it was in the nature of an emergency measure to procure funds with which to provide, among other things, teachers, classroom facilities and transportation for new classroom units, the number of which could not be determined until pupil enrollment took place at the

commencement of the next term. Board of Trustees v. Board of Comm'rs,  
83 Idaho 172, 359 P.2d 635 (1961).

**33-806. School special assistance levy. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1963, ch. 13, § 95, p. 27; am. 1963, ch. 311, § 2, p. 835; am. 1965, ch. 217, § 1, p. 500, was repealed by S.L. 1979, ch. 254, § 1.

**33-807. Certification of levies.** — The board of trustees of each school district, having determined the levies required for the several purposes authorized by law, shall, not later than the second Monday of September in each year, certify said levies to the board of county commissioners in each county in which the district may lie. Said certification shall show the name and number of the school district, the school fiscal year for which such levies are to be made, and shall list separately each levy if more than one (1), and the purpose of each thereof. In certifying the levy required to service bond issues, the board of trustees shall report the amount of available moneys in the “bond interest and redemption fund” at the time of certification and the amount required to service bond issues in the ensuing fiscal year in addition to the levy determined for such purpose.

**History.**

1963, ch. 13, § 97, p. 27; am. 1973, ch. 282, § 2, p. 597; am. 1974, ch. 4, § 1, p. 20.

**STATUTORY NOTES**

**Effective Dates.**

Section 4 of S.L. 1973, ch. 282 declared an emergency. Approved March 16, 1973.

Section 3 of S.L. 1974, ch. 4, declared an emergency. Approved February 14, 1974.

**33-808. Notice of adjustment to market value for assessment purposes upon termination of a revenue allocation area.** — (1) A charter district with a maintenance and operation levy in the immediately previous year that shall adjust its market value for assessment purposes in accordance with the provisions of section 33-802(6), Idaho Code, relating to termination of a revenue allocation area, shall advertise its action by publishing in at least the newspaper of largest paid circulation published in the county of the district, or if there is no such newspaper, then in a newspaper published nearest to the district where the advertisement is required to be published.

(2) For purposes of this section, the definition of “newspaper” shall be as established in sections 60-106 and 60-107, Idaho Code; provided further, that the newspaper of largest circulation shall be established by the statement of average annual paid weekday circulation listed on the newspaper’s sworn statement of ownership that was filed with the United States post office on a date most recently preceding the date on which the advertisement required in this section is to be published. The advertisement shall be run when the school district ascertains that it will adjust its market value for assessment purposes in accordance with the provisions of [section 33-802\(6\), Idaho Code](#), relating to termination of a revenue allocation area, and shall be published once a week for two (2) weeks following action by the board of trustees.

(3) The form and content of the notice shall be substantially as follows:  
NOTICE OF PROPERTY TAX ADJUSTMENT BY SCHOOL BOARD

The (insert name of the school district) hereinafter the “District,” has increased its market value for assessment purposes as of December 31, ..., by the amount of the increment value of the (insert name of Redevelopment Agency Revenue Allocation Area) on such date, in accordance with the provisions of [Section 33-802, Idaho Code](#), because the revenue allocation area gave notice of termination pursuant to [Section 50-2903, Idaho Code](#), and as a result thereof property taxes on the increment value of the revenue allocation area will not be collected and distributed to the District. [Section 33-802, Idaho Code](#), permits the District to replace those funds by adjusting

its market value as described herein. The total amount of dollars in property taxes to be directly collected by the District pursuant to this action is estimated to be \$.....

**History.**

I.C., § 33-808, as added by 2005, ch. 191, § 2, p. 591; am. 2006 (1st E.S.), ch. 1, § 5.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “A charter district with a maintenance and operation levy in the immediately previous year” for “A school district” at the beginning of Subsection (1) and updated references to section 33-802 in Subsections (1) and (2), necessitated by the amendment of that section.

**Compiler’s Notes.**

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

The words enclosed in parentheses so appeared in the law as enacted.





## **CHAPTER 9**

### **SCHOOL FUNDS**

#### **Section.**

33-901. School plant facilities reserve fund.

33-902. Public school permanent endowment fund.

33-902A. Public school earnings reserve fund.

33-903. Public school income fund.

33-904. County school fund.

33-905. School district building account — Payments to account —  
Moneys appropriated to state board — Application for moneys —  
Payments to districts — Reports on applications — Uses of moneys.

33-906. Bond levy equalization support program.

33-906A. Bond levy equalization fund.

33-906B. Value index calculation.

33-907. Public education stabilization fund.

33-908. [Reserved.]

33-909. Public school facilities cooperative funding program — Fund  
created.

33-910. Broadband infrastructure improvement grant fund — Rulemaking  
— Definitions.

**33-901. School plant facilities reserve fund.** — The board of trustees of any school district may create and establish a school plant facilities reserve fund by resolution adopted at any regular or special meeting of the board. All moneys for said fund accruing from taxes levied under section 33-804, Idaho Code, together with interest accruing from the investment of any moneys in the fund and any moneys allowed for depreciation of school plant facilities as are appropriated from the general fund of the district, shall be credited by the treasurer to the school plant facilities reserve fund.

Disbursements from said fund may be made from time to time as the board of trustees may determine, for purposes authorized in [section 33-1102, Idaho Code](#), and for lease and lease purchase agreements for such purposes and to repay loans from commercial lending institutions extended to pay for the construction of school plant facilities, but no expenditure for remodeling existing buildings shall be authorized and made unless the estimated cost thereof shall exceed five thousand dollars (\$5,000). Lease purchase agreements shall not extend beyond the period designated for any existing school plant facilities reserve fund levy. Expenditures may also be made from this fund for participation by the school district in any local improvement district in which the school district may be situate, but any such participation shall not create a lien upon any of the property owned by the school district.

Should any school district having a balance in its school plant facilities reserve fund be consolidated with one or more school districts to form a new school district, the moneys in such fund shall be used to retire any bonds issued by it and outstanding at the time of the consolidation. If there are no bonds outstanding, any balance in its school plant facilities reserve fund shall accrue to the new district to be added to or to create and establish a school plant facilities reserve fund.

Should any school district having a balance in its school plant facilities reserve fund be divided so as to create two (2) or more new districts the said fund may be used to retire any bonds issued by it and outstanding at the time of the division, or the said fund may be divided among the new school districts, as may be approved by the electors at the time of the division. If

the fund is divided among the new districts, a school plant facilities reserve fund is thereby created and established for each district.

The board of trustees of any school district having a school plant facilities reserve fund created and established under any of the provisions of this section, may discontinue the same by resolution adopted at any regular meeting of the board. Upon such discontinuance, any balance in the fund shall be used to retire any outstanding bonds, if any; otherwise, the balance may be transferred to the general fund of the district.

Moneys in the school plant facilities reserve fund being held for future use may be invested in the manner of [section 57-127, Idaho Code](#).

A detailed financial report of the operations in and the condition of the school plant facilities reserve fund shall be included in the annual report of each district. Forms for such reporting shall be provided by the state board of education. Such report shall be published as provided by law for the publication of annual reports of school districts.

**History.**

1963, ch. 13, § 117, p. 27; am. 1970, ch. 167, § 1, p. 493; am. 1975, ch. 136, § 1, p. 300.

**STATUTORY NOTES**

**Cross References.**

School plant facilities reserve fund levy, § 33-804.

**33-902. Public school permanent endowment fund.** — (1) There is established in the state treasury the public school permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

- (a) Proceeds from the sale of lands granted to the state by the federal government, known as public school endowment lands, and lands granted in lieu of public school endowment school lands;
- (b) Lands, money or other property acquired by gift or grant from any person or corporation or under any law or grant of the federal government for general educational purposes;
- (c) All other grants of lands or money made to the state from the federal government for general educational purposes where no other purpose is indicated in the grant;
- (d) All estates or distributive shares of estates that may escheat to the state;
- (e) All unclaimed shares and dividends of any corporation incorporated under the laws of the state;
- (f) Proceeds of royalties arising from the extraction of minerals on public school land owned by the state;
- (g) Other proceeds and avails as are required by law of the federal government or of the state of Idaho to be made a part of the fund; and
- (h) Moneys allocated from the public school earnings reserve fund.

(2) Public school endowment land sale proceeds may be deposited into the land bank fund established in [section 58-133, Idaho Code](#), to be used to acquire other lands within the state for the benefit of the endowment beneficiaries. If proceeds from the sale of public school endowment lands are not used to acquire other lands in accordance with [section 58-133, Idaho](#)

[Code](#), the proceeds from the sale shall be deposited into the public school permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the investment of the public school permanent endowment fund shall be distributed according to the provisions of [section 57-723A, Idaho Code](#).

### **History.**

[I.C., § 33-902](#), as added by 1998, ch. 256, § 7, p. 825.

## **STATUTORY NOTES**

### **Cross References.**

Public school earnings reserve fund, § 33-902A.

State board of land commissioners, Idaho [Const., Art. IX, § 7](#), and [§ 58-101 et seq.](#)

### **Prior Laws.**

Former § 33-902, which comprised 1963, ch. 13, § 119, p. 27; am. 1976, ch. 28, § 1, p. 63; am. 1984, ch. 180, § 1, p. 426; am. 1990, ch. 377, §§ 1, 4, p. 1041, was repealed by S.L. 1998, ch. 256, § 6, effective July 1, 2000.

### **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part, repealed and added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of [Article IX of the Constitution](#) of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, Chapter 256 have been met, therefore that act became effective July 1, 2000.

**33-902A. Public school earnings reserve fund.** — (1) There is established in the state treasury the public school earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The public school earnings reserve fund shall consist of the following:

(a) All earnings of the public school permanent endowment fund; (b) Proceeds of the sale of timber on public school endowment lands; (c) Proceeds of leases of public school endowment lands; (d) Proceeds of interest charged upon deferred payments on public school endowment lands or timber on those lands; (e) Earnings on contracts for the sale of timber and the sale of lands related to the public school endowment; and (f) All other proceeds received from the use of public school endowment lands and not otherwise designated for deposit in the public school permanent endowment fund.

(2) Moneys shall be distributed out of the public school earnings reserve fund only to support the beneficiaries of the public school endowment, including distributions by the state board of land commissioners to the public school permanent endowment fund and the public school income fund; provided, that funds shall not be appropriated by the legislature from the public school earnings reserve fund except to pay for administrative costs incurred managing the assets of the public school endowment including, but not limited to, real property and monetary assets.

### **History.**

I.C., § 33-902A, as added by 1998, ch. 256, § 8, p. 825.

## **STATUTORY NOTES**

### **Cross References.**

Endowment fund investment board, § 57-718.

Public school income fund, § 33-903.

Public school permanent endowment fund, § 33-902.



State board of land commissioners, Idaho [Const., Art. IX, § 7](#), and [§ 58-101 et seq.](#)

### **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which, in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of [Article IX of the Constitution](#) of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, Chapter 256 have been met; therefore, that act became effective July 1, 2000.

## **JUDICIAL DECISIONS**

**Cited in:** [State Endowment Fund Inv. Bd. v. Crane, 135 Idaho 667, 23 P.3d 129 \(2001\).](#)

**33-903. Public school income fund.** — (1) The public school income fund is that fund in the treasury of the state of Idaho to which are credited the following:

- (a) Moneys distributed from the public school earnings reserve fund and other sources the legislature deems appropriate;
- (b) Proceeds of all state taxes levied for public school purposes;
- (c) Grants of moneys from the federal government for public school purposes when other disposition is not specified by law;
- (d) Ninety percent (90%) of any moneys received by any department of state government from the federal government from sales, royalties, bonuses or rentals of oil, gas or mineral lands;
- (e) Legislative appropriations in support of the public schools, and other moneys required by the law of the federal government or of the state of Idaho to be made a part of and credited to the fund.

(2) Earnings on the investment of idle moneys in the public school income fund shall be paid to the public school income fund.

(3) Moneys in the public school income fund shall be used for the benefit of beneficiaries of the public school endowment and distributed to current beneficiaries of the public school endowment pursuant to legislative appropriation.

### **History.**

1963, ch. 13, § 119, p. 27; am. 1976, ch. 28, § 1, p. 63; am. 1984, ch. 180, § 1, p. 426; am. 1990, ch. 377, §§ 1, 4, p. 1041; am. 1998, ch. 256, § 9, p. 825.

## **STATUTORY NOTES**

### **Cross References.**

Public school earnings reserve fund, § 33-902A.

Public school permanent endowment fund, § 33-902.

## **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of **Article IX of the Constitution** of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, Chapter 256 have been met; therefore, that act became effective July 1, 2000.

**33-904. County school fund.** — The county school fund is that fund in the treasury of each county in the state to which are credited the proceeds of moneys collected from fines, forfeitures or breaches of the penal laws of the state when other disposition is not provided by law; and such other proceeds and avails as may be required by law to be credited thereto.

**History.**

1963, ch. 13, § 120, p. 27; am. 1967, ch. 243, § 4, p. 707; am. 1978, ch. 291, § 1, p. 713; am. 1979, ch. 254, § 4, p. 661.

**STATUTORY NOTES**

**Cross References.**

Apportionment of county school fund, § 33-1012.

**Effective Dates.**

Section 5 of S.L. 1967, ch. 243 read: “This act shall be and become effective on and after the first day of July, 1967; but any apportionments made from the public school income fund, or from any county school fund, from moneys accumulated in said funds, including tax receipts which may not have been transferred prior to July 4, 1967, shall be apportioned under the law in effect prior to said date.”

Section 7 of S.L. 1978, ch. 291 read: “An emergency existing therefor, which emergency is hereby declared to exist, sections 1, 2, 3 and 4 of this act shall be in full force and effect on and after their passage and approval, and retroactively to January 1, 1978. Sections 5 and 6 of this act shall be in full force and effect on and after July 1, 1978.” Became law without governor’s signature. Received by governor March 18, 1978.

**JUDICIAL DECISIONS**

Decisions Under Prior Law Buildings in Another District.

School district could not expend its funds in completing school building on property of another district under an arrangement for joint use of

building. [Olmstead v. Carter](#), 34 Idaho 276, 200 P. 134 (1921).

**33-905. School district building account — Payments to account — Moneys appropriated to state board — Application for moneys — Payments to districts — Reports on applications — Uses of moneys. —**

(1) The state of Idaho, in order to fulfill its responsibility to establish and maintain a general, uniform and thorough system of public, free common schools, hereby creates and establishes the school district building account in the state treasury. The school district building account shall have paid into it such appropriations or revenues as may be provided by law.

(2) By not later than August 31, moneys in the account pursuant to distribution from [section 67-7434, Idaho Code](#), the lottery dividends and interest earned thereon, shall be distributed to each of the several school districts, in the proportion that the average daily attendance of that district for the previous school year bears to the total average daily attendance of the state during the previous school year. For the purposes of this subsection (2) only, the Idaho school for the deaf and the blind shall be considered a school district, and shall receive a distribution based upon the average daily attendance of the school. Average daily attendance shall be calculated as provided in [section 33-1002\(3\), Idaho Code](#). For the purposes of this subsection (2) only, any school for the deaf and the blind operated by the Idaho bureau of educational services for the deaf and the blind shall be considered a school district, and shall receive a distribution based upon the average daily attendance of the school.

(3) Any other state moneys that may be made available shall be distributed to meet the requirements of [section 33-1019, Idaho Code](#). If the amount of such funds exceeds the amount needed to meet the provisions of [section 33-1019, Idaho Code](#), then the excess balance shall be transferred to the public education stabilization fund.

(4) All payments from the school district building account shall be paid out directly to the school district in warrants drawn by the state controller upon presentation of proper vouchers from the state board of education. Pending payments out of the school district building account, the moneys in the account shall be invested by the state treasurer in the same manner as provided under [section 67-1210, Idaho Code](#), with respect to other idle

moneys in the state treasury. Interest earned on the investments shall be returned to the school district building account.

(5) Payments from the school district building account received by a school district shall be used by the school district for the purposes authorized in [section 33-1019, Idaho Code](#), up to the level of the state match so required. Any payments from the school district building account received by a school district that are in excess of the state match requirements of [section 33-1019, Idaho Code](#), may be used by the school district for the purposes authorized in [section 33-1102, Idaho Code](#).

### **History.**

[I.C., § 33-905](#), as added by 1977, ch. 67, § 1, p. 128; am. 1988, ch. 251, § 1, p. 484; am. 1989, ch. 123, § 1, p. 271; am. 1990, ch. 377, §§ 2, 5, p. 1041; am. 1991, ch. 110, § 2, p. 235; am. 1994, ch. 180, § 45, p. 420; am. 1994, ch. 345, § 1, p. 1088; am. 1996, ch. 121, § 1, p. 435; am. 1998, ch. 41, § 1, p. 173; am. 2006, ch. 311, § 3, p. 957; am. 2006 (1st E.S.), ch. 1, § 6; am. 2009, ch. 168, § 2, p. 502.

## **STATUTORY NOTES**

### **Cross References.**

Bureau of educational services for the deaf and the blind, § 33-3401 et seq.

Public education stabilization fund, § 33-907.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

### **Amendments.**

The 2006 amendment, by ch. 311, in subsection (1), substituted “in order to fulfill” for “recognizing,” and deleted “in an effort to partially fulfill this responsibility” following “common schools”; deleted former subsections (2) and (3), which pertained to the appropriation of monies in the school district building account relevant to this section and chapters 35 and 36 of title 67, and application by the board of trustees of any school district to the state board of education to receive payments from the school district

building account, respectively, and made related redesignations and internal reference corrections; added subsection (3); in subsection (5), substituted “shall be used” for “may be used,” corrected the section reference, inserted “up to the level of the state match so required,” and added the last sentence; and deleted subsection (7), which pertained to reports by the school district, submitted no later than December 1, regarding projects on which monies received from the school district were expended as well as reports on planned uses for the monies received, and transmittal of summarization reports by the state department of education to the legislature no later than January 15 of the following year.

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, updated the reference to section 33-1002 at the end of Subsection (2), necessitated by the amendment of that section.

The 2009 amendment, by ch. 168, added the last sentence in subsection (2).

### **Legislative Intent.**

Section 1 of S.L. 2006, ch. 311 provided: “Legislative Findings and Intent. The Legislature hereby finds that:

“(1) **Section 1, Article IX, of the Constitution** of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, **123 Idaho 573 (1993)**, the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of **Section 1, Article IX, of the Constitution** of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted **Section 33-1612, Idaho Code**, which defined thoroughness and included ‘a safe environment conducive to learning’ among the statutory definitions of thoroughness.



“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, 132 Idaho 559 (1999), the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of **Section 1, Article IX, of the Constitution** of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by **Section 1, Article IX, of the Constitution** of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: “[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.” Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

“(7) In response to the Supreme Court’s 2005 decision, and mindful that the Supreme Court has recognized the Legislature’s efforts, following the district court’s decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature’s responsibility under **Section 1, Article IX, of the Constitution** of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or

replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

“(8) In proposing this Act, it is the intent of the Legislature to:

“(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

“(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district’s relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district’s full share of state lottery funds to be used for school building maintenance and repairs; and

“(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

“(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district’s share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district’s fair and equitable share of the costs of repair or replacement that compares the school district’s bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

“(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district’s relative ability to pay.”

**Compiler’s Notes.**

Section 13 of S.L. 2006, ch. 311 provided: “Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect.”

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

### **Effective Dates.**

Section 7 of S.L. 1990, ch. 377 provided that §§ 1, 2 and 3 of the act should be in effect on and after July 1, 1990 and that §§ 4, 5 and 6 should be in effect on July 1, 1991.

Section 6 of S.L. 1991, ch. 110 declared an emergency and provided that § 1 should be in effect March 27, 1991. Approved March 27, 1991.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 45 of S.L. 1994, ch. 180 became effective January 2, 1995.

**33-906. Bond levy equalization support program.** — (1) Pursuant to section 33-906B, Idaho Code, school districts with a value index below one (1) shall be eligible to receive additional state financial assistance for the cost of annual bond interest and redemption payments made on bonds passed on or after September 15, 2002. However, any school district with a value index of less than one and one-half (1.5), shall receive no less than ten percent (10%) of the interest cost portion of the annual bond interest and redemption payment for bonds passed on or after September 15, 2002. The state department of education shall disburse such funds to school districts from moneys appropriated from the bond levy equalization fund. The department shall disburse the funds by no later than September 1 of each year for school districts in which voters have approved the issuance of qualifying bonds by no later than January 1 of that calendar year, and which are certifying a qualifying bond interest and redemption payment for the fiscal year in which the disbursement is made. For districts with a value index below one (1), the percentage of each annual bond interest and redemption payment that is paid by the state shall be determined by dividing the difference between one (1) and the school district's value index by one (1).

(2) For the purposes of this section, the annual bond interest and redemption payment shall be determined by dividing the total payment amounts by the number of fiscal years in which payments are to be made. The interest cost portion of the annual bond interest and redemption payment shall be determined by dividing the total interest paid by the number of fiscal years in which payments are to be made. For school districts not qualifying for a state payment in the first year of the bond interest and redemption payment schedule, due solely to the January 1 eligibility deadline, the state department of education shall distribute an additional payment in the next fiscal year, in the amount of such funds that the school district would have otherwise qualified for in the current fiscal year.

(3) The provisions of this section may not be utilized to refinance existing debt or subsidize projects previously subsidized by state grants, unless the existing debt being refinanced is a bond passed on or after

September 15, 2002; provided however, that any school district that has issued qualifying bonds prior to June 30, 2004, in conformance with this section shall not be deemed to be refinancing existing debt when the qualifying bonds are utilized to finance the acquisition of public school facilities previously leased or financed through means other than the issuance of general obligation bonds approved by a two-thirds (2/3) vote at an election called for that purpose subject to subsection (5) of this section.

(4) School districts shall annually report the status of all qualifying bonds to the state department of education by January 1 of each year, including bonds approved by the voters, but not yet issued. Information submitted shall include the following:

- (a) The actual or estimated bond interest and redemption payment schedule;
- (b) Any qualifying bond that has been paid off;
- (c) Other information as may be required by the state department of education.

(5) No school district project eligible for participation in the bond levy equalization support program shall be deemed ineligible for participation due to that school district project's eligibility and prior participation in the safe school facilities loan and grant program or the Idaho safe schools facilities program under section 33-804A, 33-1017 or 33-1613, Idaho Code, provided that:

- (a) Such school district notifies the state department of education of its desire and eligibility to participate in the bond levy equalization support program; and
- (b) Such school district shall receive no state financial assistance for the project under the bond levy equalization support program until the amount to which it would otherwise have been entitled to receive shall equal the amounts received by the school district under the safe school facilities loan and grant program or the Idaho safe schools facilities program under section 33-804A, 33-1017 or 33-1613, Idaho Code.

(6) Any school district formed as a result of the consolidation of two (2) or more school districts that passes an eligible bond within three (3) years of the successful consolidation election shall participate in the bond levy

equalization support program at the district's actual value index minus twenty-five hundredths (.25). This adjustment shall apply for the duration of the bond interest and redemption payment schedule. If a school district advantaged by this subsection (6) deconsolidates either during the applicable bond interest and redemption payment schedule, or within a three (3) year period thereafter, each deconsolidated district shall, upon deconsolidation, repay to the bond levy equalization fund all additional subsidies received pursuant to this subsection (6). The proportions owed by each deconsolidated district shall be determined by the proportion that each district's market value for assessment purposes bears to the whole.

### **History.**

**I.C., § 33-906**, as added by 2002, ch. 159, § 2, p. 464; am. 2003, ch. 268, § 2, p. 717; am. 2004, ch. 198, § 1, p. 610; am. 2006, ch. 311, § 4, p. 957; am. 2007, ch. 79, § 4, p. 209; am. 2007, ch. 354, § 5, p. 1051; am. 2008, ch. 70, § 1, p. 184.

## **STATUTORY NOTES**

### **Cross References.**

Bond levy equalization fund, § 33-906A.

### **Amendments.**

The 2006 amendment, by ch. 311, in subsection (1), inserted “with a value index of less than one and one-half (1.5)” in the second sentence, and deleted “provided that the state shall pay for no more than the interest cost portion of the annual bond interest and redemption payment, and each school district shall receive no less than ten percent (10%) of the interest cost portion of the qualifying bond interest and redemption payment” from the end.

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 79, added subsection (6).

The 2007 amendment, by ch. 354, inserted “unless the existing debt being refinanced is a bond passed on or after September 15, 2002” in the first sentence in subsection (3).

The 2008 amendment, by ch. 70, in the introductory paragraph in subsection (5), inserted “project” and substituted “district project’s eligibility” for “district’s eligibility”; and in paragraph (5)(b), inserted “for the project.”

### **Legislative Intent.**

Section 1 of S.L. 2006, ch. 311 provided: “Legislative Findings and Intent. The Legislature hereby finds that:

“(1) [Section 1, Article IX, of the Constitution](#) of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, [123 Idaho 573 \(1993\)](#), the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of [Section 1, Article IX, of the Constitution](#) of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted [Section 33-1612, Idaho Code](#), which defined thoroughness and included ‘a safe environment conducive to learning’ among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, [132 Idaho 559 \(1999\)](#), the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of [Section 1, Article IX, of the Constitution](#) of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by [Section 1, Article IX, of the Constitution](#) of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding

then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: “[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.” Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

“(7) In response to the Supreme Court’s 2005 decision, and mindful that the Supreme Court has recognized the Legislature’s efforts, following the district court’s decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature’s responsibility under [Section 1, Article IX, of the Constitution](#) of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

“(8) In proposing this Act, it is the intent of the Legislature to:

“(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

“(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district’s relative ability to pay, and provides a secure, ongoing revenue source for the bond



levy equalization program, enabling each school district's full share of state lottery funds to be used for school building maintenance and repairs; and

“(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

“(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district's share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district's fair and equitable share of the costs of repair or replacement that compares the school district's bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

“(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district's relative ability to pay.”

### **Effective Dates.**

Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

**33-906A. Bond levy equalization fund.** — There is hereby created in the state treasury a bond levy equalization fund. This fund shall contain such moneys as may be directed pursuant to appropriation. Moneys in the fund shall be used exclusively to make the payments authorized by the bond levy equalization program created in section 33-906, Idaho Code. Moneys in the fund are hereby continuously appropriated for the purposes stated in section 33-906, Idaho Code, and shall only be expended for the purposes stated therein.

**History.**

I.C., § 33-906A, as added by 2002, ch. 159, § 3, p. 464; am. 2006, ch. 423, § 3, p. 1307.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 423, added the last sentence.

**33-906B. Value index calculation.** — The state department of education shall establish a value index for each school district, based on each school district's market value per support unit for equalization purposes, the average annual seasonally-adjusted unemployment rate in the county in which a plurality of the school district's market value for assessment purposes of taxable property is located and the per capita income in the county in which a plurality of the school district's market value for assessment purposes is located. The value index for each school district shall be calculated as the sum of the following three (3) components:

(1) The state department of education shall annually calculate each school district's market value per support unit, based on the market values that would be used to calculate a bond levy, and the statewide average. The first portion of the value index shall be calculated by dividing the school district's figure by the statewide average figure and dividing the result of this calculation by two (2).

(2) The second portion of the value index shall be calculated by dividing the statewide unemployment rate by the unemployment rate in the county in which a plurality of the school district's market value for assessment purposes of taxable property is located, and dividing the result of this calculation by four (4). For the purposes of this subsection, the statewide unemployment rate and county unemployment rates shall be based on the most recent average annual seasonally-adjusted unemployment rate data reported by the United States department of labor, for which there is a complete calendar year of data.

(3) The third portion of the value index shall be calculated by dividing the county per capita income in the county in which a plurality of the school district's market value for assessment purposes of taxable property is located by the statewide per capita income, and dividing the result of this calculation by four (4). For the purposes of this subsection, the statewide per capita income and county per capita income shall be based on the most recent data reported by the United States department of commerce, for which there is a complete calendar year of data.

If a bond is passed by a subdistrict created pursuant to [section 33-351, Idaho Code](#), the index used shall be that of the school district. For subdistricts created as a result of consolidation, for the purposes of retiring prior bonded indebtedness, pursuant to [section 33-311, Idaho Code](#), the subdistrict shall retain the value index factor calculated in subsection (1) of this section, as such factor was calculated in the subdistrict's last fiscal year as a separate school district. The remaining components of the subdistrict's value index calculation shall be that of the consolidated school district, as calculated each year.

### **History.**

[I.C., § 33-906B](#), as added by 2002, ch. 159, § 4, p. 464; am. 2007, ch. 79, § 7, p. 209; am. 2007, ch. 144, § 1, p. 419.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 79, added the last paragraph.

The 2007 amendment, by ch. 144, in subsection (1), in the first sentence, substituted "each school district's market value" for "the market value" and "based on the market values that would be used to calculate a bond levy" for "that is used to equalize school funding for each school district in the state," and in the second sentence, twice substituted "figure" for "market value for equalization purposes per support unit," or similar language.

### **Effective Dates.**

Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

Section 3 of S.L. 2007, ch. 144 provided that the act should take effect on and after July 1, 2007.

**33-907. Public education stabilization fund.** — There is hereby created in the state treasury a fund to be known as the public education stabilization fund, which shall function as a fund detail of the public school income fund. The fund shall consist of moneys transferred to the fund according to the provisions of sections 33-905, 33-1018 and 33-1018C, Idaho Code, and any other moneys made available through legislative transfers or appropriations. Moneys in the fund are hereby continuously appropriated for the purposes stated in sections 33-1018 and 33-1018B, Idaho Code, and shall only be expended for the purposes stated in sections 33-1018, 33-1018A and 33-1018B, Idaho Code. Any accumulated balances in the fund that are in excess of eight and one-third percent (8.334%) of the current fiscal year's total appropriation of state funds for public school support shall be transferred to the bond levy equalization fund. Interest earned from the investment of moneys in the fund shall be retained in the fund.

#### **History.**

**I.C., § 33-907**, as added by 2003, ch. 372, § 8, p. 986; am. 2006, ch. 311, § 5, p. 957; am. 2006 (1st E.S.), ch. 1, § 7; am. 2017, ch. 211, § 1, p. 514.

### **STATUTORY NOTES**

#### **Cross References.**

Bond levy equalization fund, § 33-906A.

Public school income fund, § 33-903.

#### **Amendments.**

The 2006 amendment, by ch. 311, inserted the references to sections 33-905 and 33-1018B, and substituted “five percent” for “three percent.”

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “eight and one-third percent (8.334%)” for “five percent (5%)” and “total appropriation of state funds” for “total general fund appropriation” in the next-to-last sentence and substituted “shall be retained in the fund” for “shall be credited to the public school income fund” in the last sentence.

The 2017 amendment, by ch. 211, substituted “sections 33-905, 33-1018 and 33-1018C, Idaho Code” for “sections 33-905 and 33-1018, Idaho Code” near the middle of the second sentence.

### **Legislative Intent.**

Section 1 of S.L. 2006, ch. 311 provided: “Legislative Findings and Intent. The Legislature hereby finds that:

“(1) **Section 1, Article IX, of the Constitution** of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, **123 Idaho 573 (1993)**, the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of **Section 1, Article IX, of the Constitution** of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted **Section 33-1612, Idaho Code**, which defined thoroughness and included ‘a safe environment conducive to learning’ among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, **132 Idaho 559 (1999)**, the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of **Section 1, Article IX, of the Constitution** of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by **Section 1, Article IX, of the Constitution** of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding

then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: “[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.” Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

“(7) In response to the Supreme Court’s 2005 decision, and mindful that the Supreme Court has recognized the Legislature’s efforts, following the district court’s decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature’s responsibility under [Section 1, Article IX, of the Constitution](#) of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

“(8) In proposing this Act, it is the intent of the Legislature to:

“(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

“(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district’s relative ability to pay, and provides a secure, ongoing revenue source for the bond

levy equalization program, enabling each school district's full share of state lottery funds to be used for school building maintenance and repairs; and

“(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

“(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district's share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district's fair and equitable share of the costs of repair or replacement that compares the school district's bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

“(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district's relative ability to pay.”

### **Compiler's Notes.**

Section 13 of S.L. 2006, ch. 311 provided: “Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect.”

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”



### **33-908. [Reserved.]**

**33-909. Public school facilities cooperative funding program — Fund created.** — (1) In fulfillment of the constitutional requirement to provide a general, uniform and thorough system of public, free common schools, it is the intent of the state of Idaho to advance its responsibility for providing a safe environment conducive to learning by providing a public school facilities funding program to enable qualifying school districts to address unsafe facilities identified as unsafe under the standards of the Idaho uniform school building safety act.

(2) Participation in the program, for the purpose of obtaining state financial support to abate identified school building safety hazards, requires submission of an application to the public school facilities cooperative funding program panel. Application can be made by:

(a) Any school district that has failed to approve at least one (1) or more bond levies for the repair, renovation or replacement of existing unsafe facilities, within the two (2) year period immediately preceding submission of the application; or

(b) The administrator of the division of building safety, for a school district that has failed to address identified unsafe facilities as provided in chapter 80, title 39, Idaho Code.

(3) There is hereby created within the office of the state board of education the Idaho public school facilities cooperative funding program panel, hereafter referred to as the panel. The panel shall consist of the administrator of the division of building safety, the administrator of the division of public works and the executive director of the state board of education, or a designee appointed by a panel member. It shall be the duty of the panel to consider all applications made to it, and to approve, modify or reject an application based upon the most economical solution to the problem, as analyzed within a projected twenty (20) year time frame.

(4) The application shall contain the following information:

- (a) The identified school building safety hazards and such other information necessary to document the deficiencies;
- (b) The school district's plan for abating the defects, including costs and sources and amounts of revenue available to the school district;
- (c) The market value for assessment purposes of the school district; and
- (d) A detailed accounting of all bond and plant facility levies of the school district and the revenues raised by such levies.

For applications initiated by the administrator of the division of building safety pursuant to subsection (2)(b) of this section, the school district shall provide the information required in this subsection if such information is not available to the administrator.

(5)(a) If the panel determines that it requires additional plans and information, it may authorize the expenditure of up to one hundred fifty thousand dollars (\$150,000) per application from the public school facilities cooperative fund for the procurement thereof. In considering an application, the panel shall determine whether the plan as proposed is acceptable, or is acceptable with modifications as determined by the panel, or should be rejected. If the application is approved or approved with modifications, any expenditures authorized by the panel pursuant to this subsection shall be added to the project. The panel shall notify the applicant of its decision, in writing, within ninety (90) days of receiving the application. At the same time the panel notifies the applicant, the panel shall send notification of an approved application or a modified application to the state board of education, along with the panel's specifications for the project and its cost.

(b) The panel may, upon the recommendation of the district supervisor, authorize modifications to the approved plan at any time prior to the completion of the project, giving consideration to the interests of the school district, the students and the electors in its determination. Such modification may alter the scope of work or terminate the approved plan. All modifications must meet the standards as outlined in this section.

(6) If an application received from a school district is accepted or modified by the panel, the local board of trustees of that school district, at the next election held pursuant to [section 34-106, Idaho Code](#), shall submit

the question to the qualified electors of the school district of whether to approve a bond in the amount of the cost of the project as approved by the panel.

(7) Within thirty-five (35) calendar days of receiving notification from the panel that an application submitted by the administrator of the division of building safety pursuant to subsection (2)(b) of this section has been approved or modified by the panel, or within thirty-five (35) calendar days of receiving certification from the panel that the question submitted to the electorate pursuant to subsection (6) of this section was not approved in the election, the state board of education shall appoint a district supervisor for interim state supervision of the local school district. The district supervisor shall be responsible for ensuring that the project, as approved by the panel, is completed and shall regularly report to the panel in a manner as determined by the panel upon approval of the project. The district supervisor shall also have the authority granted to said position by the provisions of [section 6-2212, Idaho Code](#). A district supervisor's term of service shall continue for the duration of the project, and such person appointed as a district supervisor shall serve at the pleasure of the state board of education.

(8) The abatement of unsafe public school facilities through the public school facilities cooperative funding program shall be performed exclusively in accordance with the regular permitting, plan review and inspection requirements of the division of building safety. The state fire marshal shall have exclusive authority to perform the powers and duties prescribed in [section 41-254, Idaho Code](#), for such facilities while the unsafe condition is being abated and under the jurisdiction of the panel-appointed district supervisor. The Idaho building code board shall function as a board of appeals for the division of building safety for such construction in accordance with the provisions of [section 39-4107, Idaho Code](#). Upon successful completion of the construction in accordance with applicable building codes, a certificate of occupancy shall be issued by the administrator of the division of building safety. Upon issuance of a certificate of occupancy, responsibility for ensuring the safety of the facility or portion thereof so constructed will then be returned to the school district and responsibility for ensuring subsequent compliance with building codes returned to the authority having jurisdiction.

(9) Upon approval of an application or a modified application submitted by the administrator of the division of building safety pursuant to subsection (2)(b) of this section, or upon receipt of certification from the county that the question submitted to the electorate pursuant to subsection (6) of this section was not approved in the election, the panel shall certify the cost of the project, as approved by the panel, to the state department of education.

(a) The total cost of the project shall initially be paid by the state from the public school facilities cooperative fund. If the district supervisor determines that the amount approved by the panel is insufficient to complete the project in a satisfactory manner, the panel may request a legislative appropriation of additional moneys from the public school facilities cooperative fund. If such an appropriation is approved, these additional moneys shall be added to the cost of the project.

(b) The district's share of costs shall be based upon actual funds expended. The district's share of costs that may be repaid through the levy provisions of this section shall not exceed the district's share of bond payment costs as calculated for the bond levy equalization support program in the fiscal year in which the application is made. Interest shall be charged on the unpaid balance of the district's share of costs, as such balance exists at the end of each fiscal year, at the rate of interest earned by the state treasurer on the investment of idle funds in that fiscal year.

(c) It shall be the responsibility of the state department of education to calculate a state-authorized plant facilities levy rate in accordance with the provisions of subsection (10) of this section, which, when imposed over a maximum period not to exceed twenty (20) years, may yield the revenues needed to repay the school district's share of the cost of the project.

(d) The levy rate calculated by the state department of education shall be certified by the department to the county or counties wherein the boundaries of the school district are contained, for assessment of the levy and collection of the revenues by such county or counties in the manner provided by law. The revenues collected by imposition of the state-authorized plant facilities levy shall be remitted to the state treasurer for deposit to the public school facilities cooperative fund.

(10) The annual state-authorized plant facilities levy rate shall be limited to the greater of:

(a) The difference between the school district's combined bond and plant facilities levy rates, and the statewide average bond and plant facility levy rates; or

(b) The statewide average plant facility levy rate.

The initial levy rate so calculated shall be established as the minimum levy rate that shall be imposed for the amount of time required to reimburse the state for the school district's share of the project cost, but not to exceed twenty (20) years, even if this period would not provide reimbursement of the entire amount of the school district's share of the cost of the project. The state department of education is authorized and directed to recalculate the levy rate on an annual basis and is authorized to increase or decrease the levy rate according to the scheduled payback, but the levy rate shall not be less than the levy rate initially imposed. Provided however, if the levy rate calculated is estimated to raise more money than would be necessary to repay the district's share of costs, then the state department of education shall certify to the county or counties wherein the boundaries of the school district are contained, the moneys necessary to repay the district's share of costs.

(11) There is hereby created in the state treasury a public school facilities cooperative fund. The fund shall contain such moneys as may be directed pursuant to appropriation. Moneys in the fund shall be used exclusively to finance the public school facilities cooperative funding program and are hereby continuously appropriated for such purposes as authorized by this section. Moneys in the fund shall be invested by the state treasurer in the same manner as provided under [section 67-1210, Idaho Code](#), with respect to other idle moneys in the state treasury. Interest earned on the investments shall be credited to the school district building account.

### **History.**

[I.C., § 33-909](#), as added by 2006, ch. 311, § 6, p. 957; am. 2012, ch. 221, § 1, p. 604; am. 2013, ch. 32, § 1, p. 70; am. 2014, ch. 11, § 1, p. 14.

## **STATUTORY NOTES**

## **Cross References.**

Administrator of the division of building safety, § 54-2607.

Administrator of the division of public works, § 67-5705.

Executive director of the state board of education, § 33-102A.

Idaho uniform school building safety act, § 39-8001 et seq.

School district building account, § 33-905.

## **Amendments.**

The 2012 amendment by ch. 221, in subsection (5), added the first and third sentences and substituted “ninety (90) days” for “sixty (60) days” and, in paragraph (8)(a), added the second and third sentences.

The 2013 amendment, by ch. 32, added present subsection (8) and redesignated former subsections (8) to (10) as present subsections (9) to (11) and substituted “subsection (10)” for “subsection (9)” in paragraph (9) (c).

The 2014 amendment, by ch. 11, in subsection (5), inserted the paragraph (a) designation and added paragraph (b); inserted the present second sentence in subsection (8); and inserted the present first sentence in paragraph (9)(b).

## **Legislative Intent.**

Section 1 of S.L. 2006, ch. 311 provided: “Legislative Findings and Intent. The Legislature hereby finds that:

“(1) **Section 1, Article IX, of the Constitution** of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, **123 Idaho 573 (1993)**, the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of **Section 1, Article IX, of the Constitution** of the state of Idaho. The Supreme Court remanded the case for trial to

determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted [Section 33-1612, Idaho Code](#), which defined thoroughness and included ‘a safe environment conducive to learning’ among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, [132 Idaho 559 \(1999\)](#), the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of [Section 1, Article IX, of the Constitution](#) of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by [Section 1, Article IX, of the Constitution](#) of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: “[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.” Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.



“(7) In response to the Supreme Court’s 2005 decision, and mindful that the Supreme Court has recognized the Legislature’s efforts, following the district court’s decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature’s responsibility under **Section 1, Article IX, of the Constitution** of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

“(8) In proposing this Act, it is the intent of the Legislature to:

“(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

“(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district’s relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district’s full share of state lottery funds to be used for school building maintenance and repairs; and

“(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

“(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district’s share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district’s fair and equitable share of the costs of repair or replacement that compares the school district’s bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

“(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building



maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district's relative ability to pay."

**Compiler's Notes.**

Section 13 of S.L. 2006, ch. 311 provided: "Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect."

**Effective Dates.**

Section 2 of S.L. 2014, ch. 11 declared an emergency. Approved February 13, 2014.

**33-910. Broadband infrastructure improvement grant fund — Rulemaking — Definitions.** — (1) There is hereby created in the state treasury a fund to be known as the broadband infrastructure improvement grant fund. The fund shall consist of moneys made available through legislative transfers or appropriations, and from any other governmental source. Interest earned from the investment of moneys in the fund shall be retained in the fund. Subject to appropriation, moneys in the fund shall be expended by the state department of education to invest in special construction projects for high-speed broadband connections to E-rate eligible entities that receive E-rate funding.

(2) The state department of education shall create and make available a grant application form for moneys in the fund. The state department may determine eligibility qualifications and applicant priority. Any E-rate eligible entity may apply to the state department for a grant from the fund for up to ten percent (10%) of the cost of an eligible special construction project.

(3) The state board of education may promulgate rules to implement the provisions of this section. Such rules shall be consistent with the federal communications commission's second E-rate modernization order that provides for additional category one funding up to ten percent (10%) to match state funding for special construction charges for high-speed broadband connections.

(4) For the purposes of this section, "E-rate eligible entity" means Idaho public schools grades K through 12, the Idaho digital learning academy, the Idaho department of juvenile corrections education programs, the school for the deaf and the blind and the Idaho public libraries.

**History.**

**I.C., § 33-910**, as added by 2016, ch. 183, § 1, p. 495; am. 2017, ch. 89, § 1, p. 236.

**STATUTORY NOTES**

**Cross References.**

Department of juvenile corrections, § 20-501 et seq.

Idaho bureau of education services for the deaf and the blind, § 33-3401 et seq.

Idaho digital learning academy, § 33-5501 et seq.

Idaho public libraries, § 33-2601 et seq.

### **Prior Laws.**

Former § 33-910, Secure rural schools and community self-determination act phase out funding, which comprised **I.C., § 33-910**, as added by S.L. 2008, ch. 384, § 2, p. 1057 was repealed by S.L. 2008, ch. 384, § 3, effective July 1, 2012.

### **Amendments.**

The 2017 amendment, by ch. 89, deleted the last sentence in subsection (2), which formerly read: “In order to receive moneys from the fund, the contract for such construction project must contain a provision that the constructing provider of the project will make any dark fiber laid pursuant to the contract available for use by any other provider”; and substituted “may promulgate” for “shall promulgate” near the beginning of the first sentence in subsection (3).

### **Federal References.**

For further information on the federal communications commission’s second E-rate modernization order, referred to in subsection (3), see <https://www.fcc.gov/general/summary-second-e-rate-modernization-order>.

### **Effective Dates.**

Section 2 of S.L. 2016, ch. 183 declared an emergency. Approved March 24, 2016.

Section 2 of S.L. 2017, ch. 89 declared an emergency. Approved March 20, 2017.



## **CHAPTER 10**

### **FOUNDATION PROGRAM — STATE AID — APPORTIONMENT**

#### **Section.**

33-1001. Definitions.

33-1002. Educational support program.

33-1002A. Fractional average daily attendance. [Null and void.]

33-1002B. Pupil tuition-equivalency allowances.

33-1002C. Summer and night school program support units — Alternative school — Juvenile detention facility.

33-1002D. Property tax replacement. [Repealed.]

33-1002E. Pupils attending school in another state.

33-1002F. Alternative school report.

33-1002G. Career technical school funding and eligibility.

33-1003. Special application of educational support program.

33-1003A. Calculation of average daily attendance.

33-1003B. Special application — Minimum support. [Repealed.]

33-1003C. Special application — Technological instruction.

33-1004. Staff allowance.

33-1004A. Experience and education multiplier.

33-1004B. Career ladder.

33-1004C. Base and minimum salaries — Leadership premiums — Education and experience index.

33-1004D. Reporting — Idaho basic educational data system.

33-1004E. District's salary-based apportionment.

33-1004F. Obligations to retirement and social security benefits.

33-1004G. Early retirement incentive — Administrative staff excluded.  
[Repealed.]

33-1004H. Employing retired teachers and administrators.

33-1004I. Master educator premiums. [Effective until July 1, 2024 — See subsection (8)].

33-1004J. Leadership premiums.

33-1005. Districts receiving federal funds.

33-1006. Transportation support program.

33-1006A. Pupil transportation audits. [Repealed.]

33-1007. Exceptional education program report.

33-1007A. Feasibility study and plan for school closures and/or school district consolidation.

33-1008. Support program — Elementary district reclassified.

33-1008A. Apportionments for increased average daily attendance.  
[Repealed.]

33-1009. Payments from the public school income fund.

33-1009A. Decrease in weighted average daily attendance. [Repealed.]

33-1010. Apportionments when mines net profits considered.

33-1011. Taxes to be levied by county commissioners — Determination and certification.

33-1012. Transmittal of county school moneys.

33-1013. County treasurer — County auditor — Duties.

33-1014. Assessment ratios and equivalency determinations. [Repealed.]

33-1015. State revenue matching under the national school lunch act.

33-1016. Levies. [Repealed.]

33-1017. School safety and health revolving loan and grant fund.

33-1018. Public school discretionary funding variability.

33-1018A. Other uses of public education stabilization fund.

- 33-1018B. School building maintenance matching funds.
- 33-1018C. Public education stabilization fund — Replacement funds.
- 33-1019. Allocation for school building maintenance required.
- 33-1020. Idaho digital learning academy funding.
- 33-1021. Math and science requirement.
- 33-1022. Public school technology. [Null and void.]
- 33-1023. Moneys provided from unanticipated public charter school closure.
- 33-1024. Online portals.
- 33-1025. Wireless technology standards.
- 33-1026. Mandatory public school funding formula review.
- 33-1027. Student enrollment counts and rulemaking.
- 33-1028. Reports to state board — Report to legislature. [Null and void, effective July 1, 2022.]

**33-1001. Definitions.** — As used in this chapter:

(1) “Administrative schools” means and applies to all elementary schools and kindergartens within a district that are situated ten (10) miles or less from both the other elementary schools and the principal administrative office of the district and all secondary schools within a district that are situated fifteen (15) miles or less from other secondary schools of the district.

(2) “Administrative staff” means those who hold an administrator certificate and are employed as a superintendent, an elementary or secondary school principal, or are assigned administrative duties over and above those commonly assigned to teachers.

(3) “At-risk student” means a student in grades 6 through 12 who:

(a) Meets at least three (3) of the following criteria:

(i) Has repeated at least one (1) grade;

(ii) Has absenteeism greater than ten percent (10%) during the preceding semester;

(iii) Has an overall grade point average less than 1.5 on a 4.0 scale prior to enrolling in an alternative secondary program;

(iv) Has failed one (1) or more academic subjects in the past year;

(v) Is below proficient, based on local criteria, standardized tests, or both;

(vi) Is two (2) or more credits per year behind the rate required to graduate or for grade promotion; or

(vii) Has attended three (3) or more schools within the previous two (2) years, not including dual enrollment; or

(b) Meets any of the following criteria:

(i) Has documented substance abuse or a pattern of substance abuse;

(ii) Is pregnant or a parent;



- (iii) Is an emancipated youth or unaccompanied youth;
- (iv) Is a previous dropout;
- (v) Has a serious personal, emotional, or medical issue or issues;
- (vi) Has a court or agency referral; or
- (vii) Demonstrates behavior detrimental to the student's academic progress.

(4) "Average daily attendance" or "pupils in average daily attendance" means the aggregate number of days enrolled students are present, divided by the number of days of school in the reporting period; provided, however, that students for whom no Idaho school district is a home district shall not be considered in such computation.

(5) "Career ladder" means the compensation table used for determining the allocations districts receive for instructional staff and pupil service staff based on specific performance criteria and is made up of a residency compensation rung and a professional compensation rung.

(6) "Child with a disability" means a child evaluated as having an intellectual disability, a hearing loss including deafness, a speech or language impairment, a visual impairment including blindness, an emotional behavioral disorder, an orthopedic impairment, autism, a traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(7) "Compensation rung" means the rung on the career ladder that corresponds with the compensation level performance criteria.

(8) "Economically disadvantaged student" means a student who:

(a) Is eligible for a free or reduced-price lunch under the Richard B. Russell national school lunch act, [42 U.S.C. 1751 et seq.](#), excluding students who are only eligible through a school's community eligibility program;

(b) Resides with a family receiving assistance under the program of block grants to states for temporary assistance for needy families (TANF)

established under part A of title IV of the social security act, [42 U.S.C. 601 et seq.](#);

(c) Is eligible to receive medical assistance under the medicaid program under title XIX of the social security act, [42 U.S.C. 1396 et seq.](#); or

(d) Is considered homeless for purposes of the federal McKinney-Vento homeless assistance act, [42 U.S.C. 11301 et seq.](#)

(9) “Elementary grades” or “elementary average daily attendance” means and applies to students enrolled in grades 1 through 6, inclusive, or any combination thereof.

(10) “Elementary schools” are schools that serve grades 1 through 6, inclusive, or any combination thereof.

(11) “Elementary/secondary schools” are schools that serve grades 1 through 12, inclusive, or any combination thereof.

(12) “English language learner” or “ELL” means a student who does not score proficient on the English language development assessment established by rule of the state board of education.

(13) “Gifted and talented” shall have the same meaning as provided in [section 33-2001\(4\), Idaho Code](#).

(14) “Homebound student” means any student who would normally and regularly attend school, but is confined to home or hospital because of an illness or accident for a period of ten (10) or more consecutive days.

(15) “Instructional staff” means those who hold an Idaho certificate issued under [section 33-1201, Idaho Code](#), and who are either involved in the direct instruction of a student or group of students or who serve in a mentor or teacher leader position for individuals who hold an Idaho certificate issued under [section 33-1201, Idaho Code](#).

(16) “Kindergarten” or “kindergarten average daily attendance” means and applies to all students enrolled in a school year, less than a school year, or summer kindergarten program.

(17) “Local salary schedule” means a compensation table adopted by a school district or public charter school, which table is used for determining moneys to be distributed for instructional staff and pupil service staff

salaries. Minimum compensation provided under a local salary schedule shall be at least equal to thirty-eight thousand five hundred dollars (\$38,500) or, for staff holding a professional endorsement, forty-two thousand five hundred dollars (\$42,500).

(18) “Measurable student achievement” means the measurement of student academic achievement or growth within a given interval of instruction for those students who have been enrolled in and attended eighty percent (80%) of the interval of instruction. Measures and targets shall be chosen at the school level in collaboration with the staff member impacted by the measures and applicable district staff and approved at the district level. The most effective measures and targets are those generated as close to the actual work as possible. Targets may be based on grade-or department-level achievement or growth goals that create collaboration within groups. Assessment tools that may be used for measuring student achievement and growth include:

- (a) Idaho standards achievement test;
- (b) Student learning objectives;
- (c) Formative assessments;
- (d) Teacher-constructed assessments of student growth;
- (e) Pre-and post-tests;
- (f) Performance-based assessments;
- (g) Idaho reading indicator;
- (h) College entrance exams or preliminary college entrance exams such as PSAT, SAT and ACT;
- (i) District-adopted assessment;
- (j) End-of-course exams;
- (k) Advanced placement exams; and
- (l) Career technical exams.

(19) “Performance criteria” means the standards specified for instructional staff and pupil service staff to demonstrate teaching proficiency for a given compensation rung. Each element of the

professional compensation rung and advanced professional compensation rung performance criteria, as identified in this section and as applicable to a staff member's position, shall be documented, reported, and subject to review for determining movement on the career ladder.

(20)(a) "Professional compensation rung performance criteria" means:

- (i) An overall rating of proficient or higher, and no components rated as unsatisfactory, on the state framework for teaching evaluation; and
- (ii) Demonstrating the majority of students have met measurable student achievement targets or student success indicator targets.

(b) "Advanced professional compensation rung performance criteria" means:

- (i) An overall rating of proficient or higher, no components rated as unsatisfactory or basic, and rated as distinguished overall in domain two — classroom environment, or domain three — instruction and use of assessment, on the state framework for teaching evaluation or equivalent for pupil service staff; and
- (ii) Demonstrating seventy-five percent (75%) or more of their students have met their measurable student achievement targets or student success indicator targets.

(21) "Public school district" or "school district" or "district" means any public school district organized under the laws of this state, including specially chartered school districts.

(22) "Pupil service staff" means those who provide services to students but are not involved in direct instruction of those students, and hold a pupil personnel services certificate.

(23) "Secondary grades" or "secondary average daily attendance" means and applies to students enrolled in grades 7 through 12, inclusive, or any combination thereof.

(24) "Secondary schools" are schools that serve grades 7 through 12, inclusive, or any combination thereof.

(25) "Separate elementary school" means an elementary school located more than ten (10) miles on an all-weather road from both the nearest

elementary school and elementary/secondary school serving like grades within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools.

(26) “Separate kindergarten” means a kindergarten located more than ten (10) miles on an all-weather road from both the nearest kindergarten school within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools.

(27) “Separate secondary school” means any secondary school located more than fifteen (15) miles on an all-weather road from any other secondary school and elementary/secondary school serving like grades operated by the district.

(28) “Special education” means specially designed instruction or speech/language therapy at no cost to the parent to meet the unique needs of a student who is a child with a disability, including instruction in the classroom, the home, hospitals, institutions, and other settings; instruction in physical education; speech therapy and language therapy; transition services; travel training; assistive technology services; and vocational education.

(29) “Student success indicators” means measurable indicators of student achievement or growth, other than academic, within a predefined interval of time for a specified group of students. Measures and targets shall be chosen at the district or school level in collaboration with the pupil service staff member impacted by the measures and applicable district staff. Student success indicators include:

- (a) Quantifiable goals stated in a student’s 504 plan or individualized education plan.
- (b) Quantifiable goals stated in a student’s behavior improvement plan.
- (c) School-or district-identified measurable student objectives for a specified student group or population.

(30) “Support program” means the educational support program as described in [section 33-1002, Idaho Code](#), the transportation support program described in [section 33-1006, Idaho Code](#), and the exceptional education support program as described in [section 33-1007, Idaho Code](#).

(31) “Support unit” means a function of average daily attendance used in the calculations to determine financial support provided to the public school districts.

(32) “Teacher” means any person employed in a teaching, instructional, supervisory, educational administrative or educational and scientific capacity in any school district. In case of doubt, the state board of education shall determine whether any person employed requires certification as a teacher.

### **History.**

[I.C., § 33-1001](#), as added by 1980, ch. 179, § 2, p. 382; am. 2000, ch. 266, § 1, p. 743; am. 2003, ch. 299, § 3, p. 814; am. 2006, ch. 244, § 5, p. 740; am. 2015, ch. 229, § 1, p. 701; am. 2016, ch. 245, § 1, p. 642; am. 2017, ch. 266, § 1, p. 661; am. 2019, ch. 328, § 2, p. 971; am. 2020, ch. 12, § 1, p. 19; am. 2020, ch. 270, § 1, p. 782; am. 2020, ch. 272, § 1, p. 795.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-1001, which comprised S.L. 1963, ch. 13, § 121, p. 27; am. 1963, ch. 322, § 1, p. 919; am. 1965, ch. 232, § 1, p. 553; am. 1972, ch. 352, § 1, p. 1040; am. 1974, ch. 127, § 5, p. 1305; am. 1975, ch. 42, § 5, p. 73; am. 1979, ch. 254, § 5, p. 661, was repealed by S.L. 1980, ch. 179, § 1.

### **Amendments.**

The 2006 amendment, by ch. 244, deleted former subsection (7), which defined the term “Idaho student information management system (ISIMS),” and redesignated the remaining subsections accordingly.

The 2015 amendment, by ch. 229, added subsections (2), (4), (5), (10), (12), (13), (14), and (16), and redesignated the remaining subsections accordingly; and substituted “located more than ten (10) miles on an all-weather road” for “which measured from itself, traveling on an all-weather

road, is situated more than ten miles distance” near the beginning in subsections (19) and (20).

The 2016 amendment, by ch. 245, inserted “and pupil service staff” in subsections (4) and (13); substituted “or school level in collaboration with the staff member impacted by the measures” for “in collaboration with the teacher” in the introductory paragraph of subsection (12); added “or student success indicator targets” in paragraph (14)(b); substituted “and hold a pupil” for “including staff holding a pupil” in subsection (16); and added subsection (22) and redesignated the subsequent subsections accordingly.

The 2017 amendment, by ch. 266, rewrote subsection (10), which formerly read: “‘Instructional staff’ means those involved in the direct instruction of a student or group of students and who hold an Idaho certificate issued under [section 33-1201, Idaho Code](#)”; in subsection (12), inserted “or preliminary college entrance exams” near the middle of paragraph (h) and substituted “Career technical” for “Professional-technical” at the beginning of (l); and added the last sentence in subsection (13).

The 2019 amendment, by ch. 328, added present subsections (3), (6), (8), (12), (13), (17), and (28), and redesignated the remaining subsections according; and rewrote the introductory paragraph, which formerly read: “The following words and phrases used in this chapter are defined as follows”.

This section was amended by three 2020 acts which appear to be compatible and have been compiled together.

The 2020 amendment, by ch. 12, substituted “hearing loss” for “hearing impairment” near the beginning of subsection (6).

The 2020 amendment, by ch. 270, in the introductory paragraph in subsection (18), deleted “district level or” preceding “school level” near the beginning and added “and approved at the district level” at the end of the second sentence, and added the present third and fourth sentences; rewrote the last sentence in subsection (19), which formerly read: “Each element of the performance criteria, as identified in subsection (14) of this section, shall be reported for determining movement on the career ladder”; and, in subsection (20), added the paragraph designations to the existing text,

inserted “or higher” near the beginning of paragraph (a)(i) and added paragraph (b).

The 2020 amendment, by ch. 272, rewrote the last sentence in subsection (19), which formerly read: “Each element of the performance criteria, as identified in subsection (14) of this section, shall be reported for determining movement on the career ladder.”

### **Legislative Intent.**

Section 1 of S.L. 2019, ch. 328 provided: “Legislative Intent. (1) It is the intent of the Legislature that the enrollment counts determined pursuant to [Section 33-1027, Idaho Code](#), as enacted by Section 5 of this act, and the reports made pursuant to [Section 33-1028, Idaho Code](#), as enacted by Section 6 of this act, be used by the Legislature to evaluate and test a new student-based formula for public school funding consistent with the recommendations made in the 2018 final report issued by the Public School Funding Formula Committee.

“(2) It is further the intent of the Legislature that the reports submitted by school districts and public charter schools pursuant to [Section 33-1028, Idaho Code](#), be used by the Superintendent of Public Instruction in formulating a budget request pursuant to [Section 67-3502, Idaho Code](#).”

### **Compiler’s Notes.**

For additional information on student 504 plans, referred to in paragraph (29)(a), see <https://www.sde.idaho.gov/topics/504>.

For additional information on student individualized education plans, referred to in paragraph (29)(a), see <https://www.sde.idaho.gov/sped/sped-manual/files/chapters/chapter-5-individualized-education-programs/The-Idaho-IEP-Gudance-Handbook.pdf>.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

## **JUDICIAL DECISIONS**

**Cited in:** [Gardner v. School Dist. No. 55, 108 Idaho 434, 700 P.2d 56 \(1985\)](#).



## **RESEARCH REFERENCES**

**Idaho Law Review.** — Regulation of Teacher Certification in Idaho: Proceedings Before Idaho's Professional Standards Commission Concerning the Denial of an Application for or Action Against a Teaching Certificate, John E. Rumel. 53 Idaho L. Rev. 527 (2017).

**33-1002. Educational support program.** — The educational support program is calculated as follows:

(1) State Educational Support Funds. Add the state appropriation, including the moneys available in the public school income fund, together with all miscellaneous revenues to determine the total state funds.

(2) From the total state funds subtract the following amounts needed for state support of special programs provided by a school district:

- (a) Pupil tuition-equivalency allowances as provided in [section 33-1002B, Idaho Code](#);
- (b) Transportation support program as provided in [section 33-1006, Idaho Code](#);
- (c) Feasibility studies allowance as provided in [section 33-1007A, Idaho Code](#);
- (d) The approved costs for border district allowance, provided in [section 33-1403, Idaho Code](#), as determined by the state superintendent of public instruction;
- (e) The approved costs for exceptional child approved contract allowance, provided in subsection 2. of [section 33-2004, Idaho Code](#), as determined by the state superintendent of public instruction;
- (f) Salary-based apportionment calculated as provided in [sections 33-1004 through 33-1004F, Idaho Code](#);
- (g) Unemployment insurance benefit payments according to the provisions of [section 72-1349A, Idaho Code](#);
- (h) For expenditure as provided by the public school technology program;
- (i) For employee severance payments as provided in [section 33-521, Idaho Code](#);
- (j) For distributions to the Idaho digital learning academy as provided in [section 33-1020, Idaho Code](#);

(k) For charter school facilities funds and reimbursements paid pursuant to [section 33-5208\(5\), Idaho Code](#);

(l) For an online course portal as provided for in [section 33-1024, Idaho Code](#);

(m) For advanced opportunities as provided for in chapter 46, title 33, Idaho Code;

(n) For additional math and science courses for high school students as provided in [section 33-1021, Idaho Code](#);

(o) For leadership premiums as provided in [section 33-1004J, Idaho Code](#);

(p) For master teacher premiums as provided in [section 33-1004I, Idaho Code](#);

(q) For the support of provisions that provide a safe environment conducive to student learning and maintain classroom discipline, an allocation of three hundred dollars (\$300) per support unit;

(r) An amount specified in the appropriation bill for the public schools educational support program for counseling support as provided for in [section 33-1212A, Idaho Code](#), shall be distributed for grades 8 through 12 as follows:

(i) For school districts and public charter schools with one hundred (100) or more students enrolled in grades 8 through 12, a pro rata distribution based on students enrolled in grades 8 through 12 or eighteen thousand dollars (\$18,000), whichever is greater;

(ii) For school districts and public charter schools with fewer than one hundred (100) students enrolled in grades 8 through 12, one hundred eighty dollars (\$180) per student enrolled in grades 8 through 12 or nine thousand dollars (\$9,000), whichever is greater;

(s) An amount specified in the public schools educational support program appropriation bill for literacy intervention pursuant to [section 33-1616, Idaho Code](#), the disbursements made to the school districts and public charter schools in the aggregate shall not exceed the total amount appropriated for this purpose and shall be based on the actual costs of such intervention programs. School districts and public charter schools

shall be reimbursed in full or in pro rata based on the average number of students in kindergarten through grade 3 who score basic or below basic on the fall statewide reading assessment in the prior three (3) years;

(t) For mastery-based education as provided for in [section 33-1630 \[33-1632\], Idaho Code](#);

(u) For pay for success contracting as provided in [section 33-125B, Idaho Code](#); and

(v) Any additional amounts as required by statute to effect administrative adjustments or as specifically required by the provisions of any bill of appropriation;

to secure the total educational support distribution funds.

(3) Average Daily Attendance. The total state average daily attendance shall be the sum of the average daily attendance of all of the school districts of the state. The state board of education shall establish rules setting forth the procedure to determine average daily attendance and the time for, and method of, submission of such report. Average daily attendance calculation shall be carried out to the nearest hundredth. Computation of average daily attendance shall also be governed by the provisions of [section 33-1003A, Idaho Code](#).

(4) Support Units. The total state support units shall be determined by using the tables set out hereafter called computation of kindergarten support units, computation of elementary support units, computation of secondary support units, computation of exceptional education support units, and computation of alternative school support units. The sum of all of the total support units of all school districts of the state shall be the total state support units.

#### COMPUTATION OF KINDERGARTEN SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Units Allowed
41 or more .....	40 .....	1 or more as computed
31 — 40.99 ADA .....	— .....	1
26 — 30.99 ADA .....	— .....	.85
21 — 25.99 ADA .....	— .....	.75
16 — 20.99 ADA .....	— .....	.6
8 — 15.99 ADA .....	— .....	.5
1 — 7.99 ADA .....	— .....	count as elementary

## COMPUTATION OF ELEMENTARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
300 or more ADA .....	23 ... grades 4, 5 & 6 .....	15
	22 ... grades 1, 2 & 3 ... 1994-95	
	21 ... grades 1, 2 & 3 ... 1995-96	
	20 ... grades 1, 2 & 3 ... 1996-97 and each year thereafter.	
160 to 299.99 ADA ...	20 .....	8.4
110 to 159.99 ADA ...	19 .....	6.8
71.1 to 109.99 ADA ....	16 .....	4.7
51.7 to 71.0 ADA ....	15 .....	4.0
33.6 to 51.6 ADA ....	13 .....	2.8
16.6 to 33.5 ADA ....	12 .....	1.4
1.0 to 16.5 ADA ....	n/a .....	1.0

## COMPUTATION OF SECONDARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
750 or more .....	18.5 .....	47
400 — 749.99 ADA .....	16 .....	28
300 — 399.99 ADA .....	14.5 .....	22
200 — 299.99 ADA .....	13.5 .....	17
100 — 199.99 ADA .....	12 .....	9
99.99 or fewer	Units allowed as follows:	
Grades 7—12	.....	8
Grades 9—12	.....	6
Grades 7—9	.....	1 per 14 ADA
Grades 7—8	.....	1 per 16 ADA

## COMPUTATION OF EXCEPTIONAL EDUCATION SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
14 or more .....	14.5 .....	1 or more as computed
12 — 13.99 .....	— .....	1
8 — 11.99 .....	— .....	.75
4 — 7.99 .....	— .....	.5
1 — 3.99 .....	— .....	.25

## COMPUTATION OF ALTERNATIVE SCHOOL SUPPORT UNITS

(Computation of alternative school support units shall include grades 6 through 12)

Pupils in Attendance	Attendance Divisor	Minimum Units Allowed
12 or more .....	12 .....	1 or more as computed

In applying these tables to any given separate attendance unit, no school district shall receive less total money than it would receive if it had a lesser average daily attendance in such separate attendance unit. In applying the kindergarten table to a kindergarten program of fewer days than a full school year, the support unit allowance shall be in ratio to the number of days of a full school year. The attendance of students attending an alternative school in a school district reporting fewer than one hundred (100) secondary students in average daily attendance shall not be assigned to the alternative table if the student is from a school district reporting fewer than one hundred (100) secondary students in average daily attendance, but shall instead be assigned to the secondary table of the school district in which they are attending the alternative school, unless the alternative school in question serves students from multiple districts reporting fewer than one hundred (100) secondary students in average daily attendance. The tables for exceptional education and alternative school support units shall be applicable only for programs approved by the state department of education following rules established by the state board of education. Moneys generated from computation of support units for alternative schools shall be utilized for alternative school programs. School district administrative and facility costs may be included as part of the alternative school expenditures.

(5) State Distribution Factor per Support Unit. Divide educational support program distribution funds, after subtracting the amounts necessary to pay the obligations specified in subsection (2) of this section, by the total state support units to secure the state distribution factor per support unit.

(6) District Support Units. The number of support units for each school district in the state shall be determined as follows:

(a)(i) Divide the actual average daily attendance, excluding students approved for inclusion in the exceptional child educational program, for the administrative schools and each of the separate schools and attendance units by the appropriate divisor from the tables of support units in this section, then add the quotients to obtain the district's support units allowance for regular students, kindergarten through grade 12 including alternative school students. Calculations in application of this subsection shall be carried out to the nearest hundredth.

(ii) Divide the combined totals of the average daily attendance of all preschool, kindergarten, elementary, secondary, juvenile detention center students and students with disabilities approved for inclusion in the exceptional child program of the district by the appropriate divisor from the table for computation of exceptional education support units to obtain the number of support units allowed for the district's approved exceptional child program. Calculations for this subsection shall be carried out to the nearest hundredth when more than one (1) unit is allowed.

(iii) The total number of support units of the district shall be the sum of the total support units for regular students, subparagraph (i) of this paragraph, and the support units allowance for the approved exceptional child program, subparagraph (ii) of this paragraph.

(b) Total District Allowance Educational Program. Multiply the district's total number of support units, carried out to the nearest hundredth, by the state distribution factor per support unit and to this product add the approved amount of programs of the district provided in subsection (2) of this section to secure the district's total allowance for the educational support program.

(c) District Share. The district's share of state apportionment is the amount of the total district allowance, paragraph (b) of this subsection.

(d) Adjustment of District Share. The contract salary of every noncertificated teacher shall be subtracted from the district's share as calculated from the provisions of paragraph (c) of this subsection.

(7) Property Tax Computation Ratio. In order to receive state funds pursuant to this section, a charter district shall utilize a school maintenance and operation property tax computation ratio for the purpose of calculating its maintenance and operation levy that is no greater than that which it utilized in tax year 1994, less four-tenths of one percent (.4%). As used herein, the term "property tax computation ratio" shall mean a ratio determined by dividing the district's certified property tax maintenance and operation budget by the actual or adjusted market value for assessment purposes as such values existed on December 31, 1993. Such maintenance and operation levy shall be based on the property tax computation ratio

multiplied by the actual or adjusted market value for assessment purposes as such values existed on December 31 of the prior calendar year.

### **History.**

**I.C., § 33-1002**, as added by 1995, ch. 306, § 4, p. 1057; am. 1995, ch. 306, § 5, p. 1057; am. 1996, ch. 146, § 1, p. 478; am. 1996, ch. 322, § 23, p. 1029; am. 1996, ch. 408, § 1, p. 1350; am. 1998, ch. 1, § 103, p. 3; am. 1999, ch. 329, § 30, p. 852; am. 2000, ch. 266, § 2, p. 743; am. 2003, ch. 299, § 4, p. 814; am. 2003, ch. 372, § 9, p. 986; am. 2005, ch. 257, § 8, p. 789; am. 2006, ch. 418, § 7, p. 1291; am. 2006 (1st E.S.), ch. 1, § 8; am. 2007, ch. 79, § 5, p. 209; am. 2007, ch. 353, § 11, p. 1045; am. 2008, ch. 27, § 8, p. 46; am. 2010, ch. 235, § 13, p. 542; am. 2013, ch. 98, § 1, p. 236; am. 2013, ch. 154, § 1, p. 360; am. 2013, ch. 294, § 1, p. 776; am. 2013, ch. 338, §§ 1, 2, p. 877; am. 2013, ch. 342, § 1, p. 900; am. 2014, ch. 83, § 2, p. 228; am. 2014, ch. 253, § 1, p. 640; am. 2015, ch. 58, § 5, p. 151; am. 2015, ch. 68, § 2, p. 183; am. 2015, ch. 229, § 2, p. 701; am. 2015, ch. 302, § 1, p. 1182; am. 2015, ch. 314, § 1, p. 1226; am. 2016, ch. 166, § 8, p. 450; am. 2016, ch. 186, § 2, p. 498; am. 2016, ch. 351, § 2, p. 1029; am. 2016, ch. 374, § 5, p. 1091; am. 2017, ch. 45, § 3, p. 66; am. 2017, ch. 145, § 3, p. 341; am. 2017, ch. 270, § 3, p. 668; am. 2018, ch. 262, § 3, p. 619.

## **STATUTORY NOTES**

### **Cross References.**

Public school income fund, § 33-903.

State board of education, § 33-101 et seq.

Superintendent of public instruction, § 67-1501 et seq.

### **Prior Laws.**

Former § 33-1002, which comprised **I.C., § 33-1002**, as added by 1980, ch. 179, § 3, p. 382; am. 1981, ch. 224, § 3, p. 443; am. 1982, ch. 23, § 1, p. 27; am. 1983, ch. 54, § 1, p. 127; am. 1983, ch. 85, § 4, p. 176; am. 1985, ch. 107, § 6, p. 191; am. 1986, ch. 45, § 1, p. 130; am. 1987, ch. 52, § 2, p. 85; am. 1987, ch. 66, § 1, p. 116; am. 1987, ch. 101, § 1, p. 200; am. 1989, ch. 155, § 19, p. 371; am. 1994, ch. 316, § 1, p. 1008; am. 1994, ch. 428, §



2, p. 1368; am. 1994, ch. 440, § 1, p. 1409, was repealed by S.L. 1995, ch. 306, §§ 1-3, effective July 1, 1994.

Another former § 33-1002, which comprised S.L. 1963, ch. 13, § 121A, as added by 1963, ch. 322, § 2, p. 919; am. 1963, ch. 323, § 1, p. 932; am. 1965, ch. 232, § 2, p. 553; am. 1967, ch. 376, § 1, p. 1103; am. 1970, ch. 252, § 1, p. 667; am. 1972, ch. 352, § 2, p. 1040; am. 1973, ch. 24, § 1, p. 45; am. 1973, ch. 296, § 2, p. 620; am. 1974, ch. 127, § 6, p. 1305; am. 1975, ch. 42, § 6, p. 73; am. 1978, ch. 102, § 1, p. 209; am. 1978, ch. 291, § 2, p. 713; am. 1979, ch. 254, § 6, p. 661, was repealed by S.L. 1980, ch. 179, § 1.

### **Amendments.**

This section was amended by three 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 146, § 1, substituted “alternative school secondary” for “alternative high school secondary” throughout the section.

The 1996 amendment, by ch. 322, § 23, in subdivision 2.i. substituted “postsecondary” for “postsecondary”; and in subdivision 3. substituted “section 63-315” for “section 63-222”.

The 1996 amendment, by ch. 408, § 1, in subdivision 2.i. substituted “postsecondary” for “postsecondary”; and in subdivision 6., added the last two sentences to the last paragraph.

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 299, § 4, rewrote subsections (2)i. through (2) l.

The 2003 amendment, by ch. 372, § 9, in subsection (3) substituted “the amount appropriated pursuant to [section 33-1002D, Idaho Code](#), plus three tenths (.3%)” for “four-tenths (.4%)” and substituted “2003-04” for “1994-95.”

The 2006 amendment, by ch. 418, in subsection 3., substituted “property taxes” for “ad valorem taxes” and added “less any maintenance and operations levy funds credited as a reduction against state funds provided for students attending school in another state” at the end.

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “the total educational support distribution funds” for “the state educational support funds” at the end of subsection (2), deleted former subsections 3 and 4, which related to local districts’ contribution calculation and educational support program distribution funds, deleted the introductory paragraph and Paragraph a. of former Paragraph 8 [now (6)], which related to the district share of state funds for educational support programs and the district contribution calculation, added present Paragraph (7), and redesignated the existing paragraphs accordingly, changing several references within the section to reflect those redesignations.

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 79, added subsection (2)(j) and made related redesignations.

The 2007 amendment, by ch. 353, added subsection (2)(k) and made related redesignations.

The 2008 amendment, by ch. 27, corrected duplicate subsection designations resultant from multiple 2007 amendments.

The 2010 amendment, by ch. 235, in paragraph (6)(a)(ii), deleted “handicapped” following “preschool” and inserted “and students with disabilities.”

This section was amended by six 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 98, added the paragraph designated as (2)[(r)] and redesignated the subsequent paragraphs in subsection (2) accordingly.

The 2013 amendment, by ch. 154, inserted the paragraphs designated as (2)[(o)], (2)[(p)], and (2)[(q)] and redesignated the subsequent paragraphs in subsection (2) accordingly.

The 2013 amendment, by ch. 294, substituted “nearest hundredth” for “nearest tenth” three times in subsection (6).

The 2013 amendment, by ch. 338, § 1, added paragraphs designated as (2)[(m)] and (2)[(n)] and redesignated the subsequent paragraphs in

subsection (2) accordingly.

The 2013 amendment, by ch. 338, § 2, deleted two paragraphs from subsection (2), which read: “For differential pay as provided in [section 33-1004J, Idaho Code](#),” and “For technology pilot projects as provided in [section 33-4811, Idaho Code](#)” and redesignated the subsequent paragraphs in subsection (2) accordingly.

The 2013 amendment, by ch. 342, added paragraph (2)(l) and redesignated the subsequent paragraphs in subsection (2) accordingly.

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 83, inserted present paragraph (2)(q) and redesignated the subsequent subsections accordingly.

The 2014 amendment, by ch. 253, inserted the present third sentence in the paragraph following the support units tables.

This section was amended by five 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 58, in paragraphs (2)(n) and (2)(o), updated references in light of the 2015 revision of chapter 46, title 46, Idaho Code.

The 2015 amendment, by ch. 68, added paragraph (2)[(u)](t).

The 2015 amendment, by ch. 229, in subsection (2), added paragraph (r), and redesignated former paragraphs (r) and (s).

The 2015 amendment, by ch. 302, in subsection (4), deleted “secondary” following “alternative” or “alternative school” throughout and added “Computation of alternative school support units shall include grades 6 through 12” in the last table heading.

The 2015 amendment, by ch. 314, in subsection (2), substituted “three hundred dollars (\$300)” for “\$300” near the end of paragraph (r), added paragraph (s) and redesignated former paragraph (s) as paragraph (t); and, in subsection (6), twice substituted “subparagraph” for “subsection (6)(a)” and “paragraph” for “section” near the end of paragraph (a)(iii), and substituted “paragraph” for “subsection (6)” and “subsection” for “section” at the end of paragraphs (c) and (d).

This section was amended by four 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 166, § 8, in subsection (2), deleted former paragraph (o), which read: “For the ‘8 in 6 program’ as provided for in [section 33-4603, Idaho Code](#)” and redesignated the subsequent paragraphs accordingly.

The 2016 amendment, by ch. 186, § 2, in subsection (2), added (t) [now (s)] and switched the order and redesignated the last two paragraphs.

The 2016 amendment, by ch. 351, § 2, in subsection (2), rewrote subsection (t) [now (s)], which formerly read: “An amount specified in the appropriation bill for the public schools educational support program for counseling support as provided for in [section 33-1212A, Idaho Code](#), shall be distributed, in full or pro rata, based on one hundred twenty dollars (\$120) per first reporting period support unit for grades 8 through 12 or ten thousand dollars (\$10,000), whichever is greater” and redesignated the subsequent paragraphs.

The 2016 amendment, by ch. 374, § 5, in subsection (2), substituted “chapter 46, title 33, Idaho Code” for “[section 33-4602, Idaho Code](#)” at the end of paragraph (n), deleted former paragraph (o), which read: “For the ‘8 in 6 program’ as provided for in [section 33-4603, Idaho Code](#)”, and redesignated the subsequent paragraphs accordingly.

This section was amended by three 2017 acts which appear to be compatible and have been compiled together.

The 2017 amendment, by ch. 45, in subsection (2), deleted former paragraph (f), which read: “Certain expectant and delivered mothers allowance as provided in [section 33-2006, Idaho Code](#)” and redesignated the subsequent paragraphs accordingly.

The 2017 amendment, by ch. 145, in subsection (2), inserted present paragraph (v) [now (u)] and redesignated the remaining paragraphs accordingly.

The 2017 amendment, by ch. 270, in subsection (2), in present paragraph (r), substituted “fourteen thousand dollars (\$14,000)” for “ten thousand dollars (\$10,000)” near the end of paragraph (i) and substituted “one hundred forty dollars (\$140) per student enrolled in grades 8 through 12 or

seven thousand dollars (\$7,000), whichever is greater” for “one hundred dollars (\$100) per student enrolled in grades 8 through 12 or five thousand dollars (\$5,000), whichever is greater” at the end of paragraph (ii), and renumbered the paragraphs.

The 2018 amendment, by ch. 262, in subsection (2), substituted “one hundred eighteen thousand dollars (\$118,000)” for “one hundred fourteen thousand dollars (\$114,000)” in paragraph (q)(i), substituted “one hundred eighty dollars (\$180)” for “one hundred forty dollars (\$140)” and “nine thousand dollars (\$9,000)” for “seven thousand dollars (\$7,000)” in paragraph (q)(ii), and redesignated paragraph (v) as paragraph (u).

### **Legislative Intent.**

Section 6 of S.L. 2007, ch. 353 provided “It is legislative intent that the Idaho Safe and Drug-Free School Program shall include the following:

“(1) Districts will develop a policy and plan which will provide a guide for their substance abuse problems.

“(2) Districts will have an advisory board to assist each district in making decisions relating to the programs.

“(3) The districts’ substance abuse programs will be comprehensive to meet the needs of all students. This will include prevention programs, student assistance programs that address early identification and referral, and aftercare.

“(4) Districts shall submit an annual evaluation of their programs to the State Department of Education as to the effectiveness of their programs.”

Section 30 of S.L. 2013, ch. 326 provided: “It is legislative intent that the State Department of Education shall compile information concerning school district and charter school expenditures of funds pursuant to the safe school environment and student learning provisions of [Section 33-1002\(2\)\(l\), Idaho Code](#), for fiscal year 2014 and post such information to the department’s website no later than December 31, 2014.”

Section 1 of S.L. 2014, ch. 83 provides: “Legislative Intent. It is the intent of the Legislature to support and implement the recommendation of the 2013 Task Force for Improving Education regarding leadership awards and the career ladder compensation model (Task Force Summary

Recommendation 12 and Fiscal Stability/Effective Teachers and Leaders Subcommittee Recommendation 1.2).”

Section 1 of S.L. 2017, ch. 270 provided: “Legislative Intent. It is the intent of the Legislature to continue to distribute all funds appropriated for college and career advising pursuant to [Section 33-1212A, Idaho Code.](#)”

Section 1 of S.L. 2018, ch. 262, provided: “Legislative intent. It is the intent of the Legislature to continue to distribute all funds appropriated for college and career advising pursuant to [section 33-1212A, Idaho Code.](#)”

### **Compiler’s Notes.**

The bracketed insertion in paragraph (2)(t) was added by the compiler to account for the renumbering of the referenced section upon its enactment in 2015.

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011 and April 9, 2012. The amendments by S.L. 2011, ch. 247 were the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendments, and the amendment by S.L. 2012, ch. 340, became null and void, and this section returned to its pre-2011 provisions, prior to the 2013 amendments.

S.L. 2016, Chapter 374 became law without the signature of the governor.

### **Effective Dates.**

Section 7 of S.L. 1995, ch. 306 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval and retroactively to July 1, 1994. Approved March 21, 1995.

Section 8 of S.L. 2007, ch. 79 declared an emergency retroactively to January 1, 2007 and approved March 14, 2007.

Section 2 of S.L. 2013, ch. 294 declared an emergency. Approved April 9, 2013.

Section 9 of S.L. 2013, ch. 338 provided that sections 1, 3, 5, 6, and 8 of the act should take effect July 1, 2013.

Section 9 of S.L. 2013, ch. 338 provided that sections 2, 4, and 7 of the act should take effect July 1, 2014.

Section 15 of S.L. 2015, ch. 229 provided that the act should take effect on and after July 1, 2019.

Section 5 of S.L. 2015, ch. 302 provided that the act should take effect on and after July 1, 2016.

Section 9 of S.L. 2016, ch. 166 provided that the amendment of this section by § 8 of that act should take effect on and after July 1, 2019.

Section 8 of S.L. 2016, ch. 186 provided that the amendment of this section by section 2 of that act should take effect on and after July 1, 2019.

Section 3 of S.L. 2016, ch. 351 provided that the amendment of this section by section 2 of that act should take effect on and after July 1, 2019.

Section 4 of S.L. 2017, ch. 45 provided that the amendment of this section by section 3 of the act should take effect on and after July 1, 2019.

Section 4 of S.L. 2017, ch. 145, provided that the amendment of this section by section 3 of that act should take effect on and after July 1, 2019.

Section 4 of S.L. 2017, ch. 270 provided that the amendment of this section by section 3 of that act should take effect on and after July 1, 2019.

Section 4 of S.L. 2018, ch. 262 provided that the amendment of this section should take effect on and after July 1, 2019.

### **33-1002A. Fractional average daily attendance. [Null and void.]**

Null and void, pursuant to rejection of Proposition 3 on November 6, 2012.

#### **History.**

**I.C., § 33-1002A**, as added by 2011, ch. 247, § 6, p. 669; am. 2011, ch. 300, § 1, p. 857; am. 2012, ch. 16, § 1, p. 34.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 33-1002A, Local district contribution reduction, which comprised comprised **I.C., § 33-1002A**, as added by 1991, ch. 320, § 1, p. 832, was repealed by S.L. 2006 (1st E.S.), ch. 1, § 9, effective January 1, 2006.

Another former § 33-1002A, which comprised S. L. 1970, ch. 88, § 1, p. 216, was repealed by S.L. 1972, ch. 352, § 3.

#### **Compiler's Notes.**

This section was enacted by S.L. 2011, ch. 247, effective April 8, 2011. Session Laws 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendments by S.L. 2011, ch. 300 and S.L. 2012, ch. 16, became null and void.



**33-1002B. Pupil tuition-equivalency allowances.** — 1. Districts which educate pupils placed by Idaho court order in licensed homes, agencies, institutions or juvenile detention facilities shall be eligible for an allowance equivalent to forty-two percent (42%) of the previous year's gross per pupil cost calculated on a daily basis. This district allowance shall be in addition to support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction.

2. Districts which educate pupils placed by Idaho court order in a juvenile detention facility with a summer school program shall be eligible for an allowance equivalent to one-half ( $\frac{1}{2}$ ) of forty-two percent (42%) of the previous year's gross per pupil cost calculated on a daily basis. This district allowance shall be in addition to support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction.

3. Districts which educate school age special education students who, due to the nature and severity of their disabilities, are residing in licensed public or private residential facilities or homes, and whose parents are not patrons of the district, shall be eligible for an allowance equivalent to forty-two percent (42%) of the previous year's gross per pupil cost per child plus the excess cost rate that is annually determined by the state superintendent of public instruction. This district allowance shall be in addition to exceptional education support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction.

4. For school age special education students from outside the state of Idaho who, due to the nature and severity of their disabilities, are residing in licensed public or private residential facilities within the state of Idaho, the local school district shall provide education services to such students if requested by the licensed public or private residential facility, provided that the local school district has been given the opportunity to provide input on any federally required education plans for any such students. A local school district providing education services for such students shall sign a contract

with any such licensed public or private residential facilities, which contract shall delineate the education services to be provided by the local school district and the amount to be paid by the licensed public or private residential facility. The amount paid shall be equal to the local school district's full cost of providing the education services delineated by the contract, as determined by the local school district. Such students shall be excluded from all average daily attendance and other reports provided to the state that would result in the distribution of state funding to the local school district.

5. For school age nonspecial education students from outside the state of Idaho who are residing in licensed public or private residential facilities within the state of Idaho, the local school district may provide education services to such students if requested by the licensed public or private residential facility. A local school district providing education services for such students shall sign a contract with any such licensed public or private residential facilities, which contract shall delineate the education services to be provided by the local school district and the amount to be paid by the licensed public or private residential facility. The amount paid shall be equal to the local school district's full cost of providing the education services delineated by the contract, as determined by the local school district. Such students shall be excluded from all average daily attendance and other reports provided to the state that would result in the distribution of state funding to the local school district.

### **History.**

**I.C., § 33-1002B**, as added by 1994, ch. 428, § 3, p. 1368; am. 1994, ch. 440, § 2, p. 1409; am. 1996, ch. 133, § 1, p. 456; am. 2001, ch. 93, § 2, p. 232; am. 2001, ch. 252, § 1, p. 917; am. 2008, ch. 401, § 1, p. 1104; am. 2013, ch. 169, § 1, p. 389.

## **STATUTORY NOTES**

### **Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 93, § 2, in subsection 1. deleted “group” preceding “home”.

The 2001 amendment, by ch. 252, § 1, in subsection 1., added “calculated on a daily basis.” following “tuition rate per pupil”; added subsection 2.; and redesignated former subsection 2. as present subsection 3.

The 2008 amendment, by ch. 401, throughout the section, inserted “forty-two percent (42%) of”; in subsection 1., substituted “gross per pupil cost” for “certified local annual tuition rate per pupil”; in subsection 2., substituted “gross per pupil cost” for “local annual tuition rate per pupil”; and in subsection 3., substituted “gross per pupil cost per child” for “certified local annual tuition rate per child.”

The 2013 amendment, by ch. 169, added subsections 4 and 5.

### **Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

**33-1002C. Summer and night school program support units — Alternative school — Juvenile detention facility.** — (1) Alternative summer or night school programs of not less than two hundred twenty-five (225) hours of instruction, which shall be included in the educational support units calculated as provided in section 33-1002, Idaho Code, may be established as approved by the state board of education. The average daily attendance divided by forty (40) shall determine the number of allowable support units which shall be included in the alternative school support units calculated for the school district for the succeeding school term.

(2) For any alternative school designated pursuant to [section 46-805, Idaho Code](#), full-term average daily attendance shall be used to calculate support units for each cohort of students that meets the minimum instructional hours requirement provided for in [section 33-512, Idaho Code](#). The support units so calculated shall be used for all state funding formulas in which support units are used.

(3) Districts that educate pupils placed by court order in a juvenile detention facility may establish a summer or night school program that shall be included in the educational support units calculated as provided in [section 33-1002, Idaho Code](#). The average daily attendance divided by forty (40) shall determine the number of allowable support units that shall be included in the exceptional education school support units calculated for the school district for the succeeding school term.

(4) Average daily attendance and the support units generated by this section shall not be included in or subject to the provisions of [section 33-1003, Idaho Code](#), and shall be included as an addition to any other support units generated pursuant to Idaho Code.

### **History.**

[I.C., § 33-1002C](#), as added by 1990, ch. 204, § 1, p. 457; am. 1992, ch. 42, § 1, p. 142; am. 1996, ch. 146, § 2, p. 478; am. 2001, ch. 252, § 2, p. 917; am. 2002, ch. 154, § 1, p. 449; am. 2005, ch. 255, § 5, p. 782; am.

2013, ch. 268, § 1, p. 696; am. 2015, ch. 302, § 2, p. 1182; am. 2019, ch. 328, § 3, p. 971.

## **STATUTORY NOTES**

### **Amendments.**

The 2013 amendment, by ch. 268, added present subsection (2) and renumbered the subsequent subsections accordingly.

The 2015 amendment, by ch. 302, deleted “secondary” following “Alternative” in the section heading and near the beginning of subsections (1) and (2) and deleted “secondary” following “alternative school” in the last sentence in subsection (1).

The 2019 amendment, by ch. 328, inserted “and night” near the beginning of the section heading; and inserted “or night” following “summer” near the beginning of subsection (1) and near the beginning of subsection (3).

### **Legislative Intent.**

Section 1 of S.L. 2019, ch. 328 provided: “Legislative Intent. (1) It is the intent of the Legislature that the enrollment counts determined pursuant to [Section 33-1027, Idaho Code](#), as enacted by Section 5 of this act, and the reports made pursuant to [Section 33-1028, Idaho Code](#), as enacted by Section 6 of this act, be used by the Legislature to evaluate and test a new student-based formula for public school funding consistent with the recommendations made in the 2018 final report issued by the Public School Funding Formula Committee.

“(2) It is further the intent of the Legislature that the reports submitted by school districts and public charter schools pursuant to [Section 33-1028, Idaho Code](#), be used by the Superintendent of Public Instruction in formulating a budget request pursuant to [Section 67-3502, Idaho Code](#).”

### **Effective Dates.**

Section 2 of S.L. 1992, ch. 42 declared an emergency. Approved March 16, 1992.

Section 8 of S.L. 2005, ch. 255 declared an emergency. Approved April 5, 2004.

Section 5 of S.L. 2015, ch. 302 provided that the act should take effect on and after July 1, 2016.

## **33-1002D. Property tax replacement. [Repealed.]**

### **STATUTORY NOTES**

#### **Compiler's Notes.**

This section, which comprised **I.C., § 33-1002D**, as added by 1995, ch. 26, § 2, p. 33; am. 1996, ch. 322, § 24, p. 1029; am. 1998, ch. 362, § 1, p. 1133; am. 2003, ch. 372, § 10, p. 986; am. 2003, ch. 373, § 1, p. 998; am. 2005, ch. 191, § 3, p. 591, was repealed by S.L. 2006 (1st E.S.), ch. 1, § 9, effective January 1, 2006.

Chapter 26, § 2, effective retroactive to January 1, 1995, and ch. 108, § 1, effective July 1, 1995, each purported to create a new § 33-1002D. Chapter 26, § 2 was compiled as § 33-1002D and was later repealed by S.L. 2006 (1st E.S.), ch. 1, § 9. S.L. 1995, ch. 108, § 1 was compiled as § 33-1002F by the publisher and was permanently designated at that citation by S.L. 1996, ch. 146, § 3.

**33-1002E. Pupils attending school in another state.** — In any school district which abuts upon the border of another state, the resident pupils of said district may attend schools in the other state as provided in section 33-1403, Idaho Code.

### **History.**

1963, ch. 13, § 126, p. 27; am. 1963, ch. 322, § 4, p. 919; am. 1980, ch. 179, § 5, p. 382; am. and redesis. 1994, ch. 428, § 4, p. 1368; am. 2002, ch. 287, § 1, p. 833.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-1002E, which comprised **I.C., § 33-1002E**, as added by 1989, ch. 125, § 1, p. 276, was repealed by S.L. 1994, ch. 428, § 1, effective July 1, 1994.

### **Compiler's Notes.**

This section was formerly compiled as § 33-1004.

### **Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: "For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this



act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

**33-1002F. Alternative school report.** — Annually, prior to the tenth legislative day, the department of education shall file with the legislature a report detailing the alternative school programs within the state. On July 1 of each year, or as soon thereafter as feasible, each school district receiving moneys pursuant to the alternative school support units factor in section 33-1002, Idaho Code, or section 33-1002C, Idaho Code, shall file with the state department a comprehensive report of the amount of money received in the district, the expenditure on alternative school programs, and the programs provided. This information shall be compiled by the department for transmission to the legislature.

### **History.**

I.C., § 33-1002D, as added by 1995, ch. 108, § 1, p. 341; am. and redesisg. 1996, ch. 146, § 3, p. 478; am. 2015, ch. 302, § 3, p. 1182.

## **STATUTORY NOTES**

### **Compiler's Notes.**

S.L. 1995, ch. 26, § 2, effective retroactive to January 1, 1995, and S.L. 1995, ch. 108, § 1, effective July 1, 1995, each purported to create a new § 33-1002D. Chapter 26, § 2 was compiled as § 33-1002D, and later repealed by S.L. 2006 (1st E.S.), ch. 1, § 9, and ch. 108, § 1 was compiled by the publisher as § 33-1002F. The recompilation was made permanent by S.L. 1996, ch. 146, § 3.

### **Amendments.**

The 2015 amendment, by ch. 302, deleted “secondary” preceding “school programs” in the first sentence and deleted “secondary” following “alternative school” in the second sentence.

### **Effective Dates.**

Section 5 of S.L. 2015, ch. 302 provided that the act should take effect on and after July 1, 2016.

**33-1002G. Career technical school funding and eligibility.** — (1) School districts and public charter schools may establish career technical schools that qualify for funding appropriated for the specific purpose of supporting the added cost of career technical schools. These funds will be appropriated to the state board for career technical education, to be expended by the division of career technical education. In order for a school to qualify for funding as a career technical school, it must make application to the division of career technical education on or before the fifteenth of April for the following fiscal year. This includes applicants for new schools and renewal applications. Approved public charter schools with career technical education programs will receive the same added cost unit as any other eligible school on an actual approved cost basis not to exceed the per-student cost for a traditional instructional delivery method. All career technical schools must meet all three (3) of the following criteria:

(a) The school serves students from two (2) or more high schools. No one (1) high school can comprise more than eighty-five percent (85%) of the total enrolled career technical school students. In the event a student enrolled in the career technical school is not enrolled in a public high school, the eighty-five percent (85%) will be calculated based on the public high school attendance area where the student resides. This provision does not exclude a public charter school with a statewide boundary from applying for appropriate added cost funds authorized for career technical education, irrespective of the instructional delivery method.

(b) The majority of the school's program offerings lead to some form of postsecondary credit, such as dual credit or other advanced opportunities, as defined by the state board of education, or include apprenticeship opportunities.

(c) All school programs offer at least one (1) supervised field experience for all students.

(2) All career technical schools must also meet at least one (1) of the following three (3) requirements:

- (a) The school is funded separately from schools that qualify for computation using regular secondary support units.
- (b) The school has a separate and distinct governing board.
- (c) The majority of the school programs are provided at dedicated facilities that are separate from the regular high school facilities.

### **History.**

**I.C., § 33-1002G**, as added by 1998, ch. 261, § 2, p. 863; am. 1999, ch. 329, § 2, p. 852; am. 2016, ch. 25, § 7, p. 35; am. 2018, ch. 341, § 1, p. 781; am. 2019, ch. 298, § 1, p. 881.

## **STATUTORY NOTES**

### **Cross References.**

Division of career technical education, § 33-2205.

State board for career technical education, § 33-2202.

State board of education, § 33-101 et seq.

### **Amendments.**

The 2016 amendment, by ch. 25, substituted “career technical” for “professional-technical” throughout the section; and deleted the former fifth sentence in the introductory paragraph, which read: “For fiscal year 1999, applications must be made by May 1.”

The 2018 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

The 2019 amendment, by ch. 298, in subsection (1), inserted “and public charter schools” near the beginning of the first sentence and added the next-to-last sentence in the introductory paragraph and added the last sentence in paragraph (a).

### **Legislative Intent.**

Section 1 of S.L. 1998, ch. 261 provided: “Legislative Intent. There is growing consensus that public schools need to better adapt to today’s workplace demands by providing curriculum and experiences that closely align themselves to the reality of the workplace. The emerging professional-

technical skills center approach has been shown to accomplish this end. These schools are intended to serve students of all ability levels, including the gifted and talented. Courses are typically aligned with higher education and have a field experience component. Equipment is more attuned to current industry standards and students from more than one high school access the centers. These centers always exceed the costs associated with a 'regular' high school and this factor has discouraged their widespread utilization. Idaho is no exception. This act provides a modest increase in per student funding over the regular secondary school units. It is the intent of the legislature in providing this increase to help cover the additional skill center costs of lower teacher-pupil ratios, transportation, equipment and field experience supervision."

**33-1003. Special application of educational support program.** — (1) Decrease in Average Daily Attendance. — For any school district that has a decrease in total average daily attendance of three percent (3%) or more of its average daily attendance in the current school year from the total average daily attendance used for determining the allowance in the educational support program for the prior school year, the allowance of funds from the educational support program may be based on the average daily attendance of the prior school year, less three percent (3%). When this provision is applied, the decrease in average daily attendance shall be proportionately distributed among the various categories of support units that are appropriate for the district. After applying the provisions of this subsection, the state department of education shall calculate the percentage of additional statewide support units to total statewide support units and shall then reduce each school district's support units by this uniform percentage. The provisions of this subsection shall not apply to public charter schools.

(2) Application of Support Program to Separate Schools/Attendance Units in District.

(a) Separate Elementary School. — Any separate elementary school shall be allowed to participate in the educational support program as though the school were the only elementary school operated by the district.

(b) Hardship Elementary School. — Upon application of the board of trustees of a school district, the state board of education is empowered to determine that a given elementary school or elementary schools within the school district, not otherwise qualifying, are entitled to be counted as a separate elementary school as defined in [section 33-1001, Idaho Code](#), when, in the discretion of the state board of education, special conditions exist warranting the retention of the school as a separate attendance unit and the retention results in a substantial increase in cost per pupil in average daily attendance above the average cost per pupil in average daily attendance of the remainder of the district's elementary grade school pupils. An elementary school operating as a previously approved hardship elementary school shall continue to be considered as a separate

attendance unit, unless the hardship status of the elementary school is rescinded by the state board of education.

(c) Separate Secondary School. — Any separate secondary school shall be allowed to participate in the educational support program as though the school were the only secondary school operated by the district.

(d) Elementary/Secondary School Attendance Units. — Elementary grades in an elementary/secondary school will be funded as a separate attendance unit if all elementary grades served are located more than ten (10) miles distance by an all-weather road from both the nearest like elementary grades within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools. Secondary grades in an elementary/secondary school will be funded as a separate attendance unit if all secondary grades served are located more than fifteen (15) miles by an all-weather road from the nearest like secondary grades operated by the district.

(e) Hardship Secondary School. — Any district that operated two (2) secondary schools separated by less than fifteen (15) miles, but which district was created through consolidation subsequent to legislative action pursuant to chapter 111, laws of 1947, and which school buildings were constructed prior to 1935, shall be entitled to count the schools as separate attendance units.

(f) Minimum Pupils Required. — Any elementary school having less than ten (10) pupils in average daily attendance shall not be allowed to participate in the state or county support program unless the school has been approved for operation by the state board of education.

(3) Remote Schools. — The board of trustees of any Idaho school district that operates and maintains a school that is remote and isolated from the other schools of the state because of geographical or topographical conditions may petition the state board of education to recognize and approve the school as a remote and necessary school. The petition shall be in form and content approved by the state board of education and shall provide such information as the state board of education may require. Petitions for the recognition of a school as a remote and necessary school

shall be filed annually at least ninety (90) days prior to the date of the regular June meeting of the board of trustees.

Within forty-five (45) days after the receipt of a petition for the recognition of a remote and necessary school, the state board of education shall either approve or disapprove the petition and notify the board of trustees of its decision. Schools that the state board of education approves as being necessary and remote shall be allowed adequate funding within the support program for an acceptable educational program for the students of the school. In the case of a remote and necessary secondary school, grades 7-12, the educational program shall be deemed acceptable when, in the opinion of the state board of education, the accreditation standard relating to staff size, established in accordance with the provisions of [section 33-119, Idaho Code](#), has been met. The final determination of an acceptable program and adequate funding in the case of a remote and necessary elementary school shall be made by the state board of education.

(4) Support Program When District Boundaries are Changed.

(a) In new districts formed by the division of a district, the support program computed for the district, divided in its last year of operation, shall be apportioned to the new districts created by the division in the proportion that the average daily attendance of pupils, elementary and secondary combined, residing in the area of each new district so created, is to the average daily attendance of all pupils, elementary and secondary combined, in the district divided in its last year of operation before the division.

(b) When boundaries of districts are changed by excision or annexation of territory, the support program of any district from which territory is excised for the last year of operation before such excision shall be divided, and apportioned among the districts involved, as prescribed in paragraph (a) of this subsection.

(c) In new districts formed by consolidation of former districts after January 1, 2007, the support program allowance, for a seven (7) year period following the formation of the new district, shall not be less than the combined support program allowances of the component districts in the last year of operation before consolidation. After the expiration of this period, the state department of education shall annually calculate the



number of support units that would have been generated had the previous school districts not consolidated. All applicable state funding to the consolidated district shall then be provided based on a support unit number that is halfway between this figure and the actual support units, provided that it cannot be less than the actual support units.

### **History.**

[I.C., § 33-1003](#), as added by 2013, ch. 184, § 2, p. 441; am. 2018, ch. 164, § 7, p. 322.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-1003, Special applications of educational support program, which comprised 1963, ch. 322, § 3, p. 919; am. 1965, ch. 232, § 3, p. 553; am. [I.C., § 35-1003A](#), as added by 1973, ch. 86, § 1, p. 136; am. 1978, ch. 66, § 1, p. 133; am. [I.C., § 33-1003B](#), as added by 1979, ch. 32, § 1, p. 47; am. 1979, ch. 254, § 7, p. 661; am. 1980, ch. 179, § 4, p. 382; am. 1980, ch. 180, § 1, p. 399; am. 1982, ch. 185, § 1, p. 488; am. 1983, ch. 53, § 1, p. 125; am. 1984, ch. 97, § 1, p. 223; am. 1985, ch. 236, § 1, p. 560; am. 1987, ch. 123, § 1, p. 251; am. 1989, ch. 296, § 3, p. 724; am. 1996, ch. 208, § 7, p. 658; am. 1996, ch. 322, § 25, p. 1029; am. 1997, ch. 117, § 5, p. 298; am. 2000, ch. 266, § 3, p. 743; am. 2006 (1st E.S.), ch. 1, § 10; am. 2007, ch. 79, § 6, p. 209, was repealed by S.L. 2013, ch. 184, § 1, effective March 29, 2013.

### **Amendments.**

The 2018 amendment, by ch. 164, substituted “regular June meeting of the board of trustees” for “annual meeting of the board of trustees as established in [section 33-510, Idaho Code](#)” at the end of the last sentence in the first paragraph of subsection (3).

### **Compiler’s Notes.**

Former § 33-1003 was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the

amendments by S.L. 2011, ch. 295, S.L. 2011, ch. 335, and S.L. 2012, ch. 340, became null and void, and this section was returned to its pre-2011 provisions, prior to its repeal in 2013.

**Effective Dates.**

Section 3 of S.L. 2013, declared an emergency. Approved March 29, 2013.

**33-1003A. Calculation of average daily attendance.** — In computing the average daily attendance the entire school year shall be used except that the twenty-eight (28) weeks having the highest average daily attendance, not necessarily consecutive, may be used. When a school is closed, or if a school remains open but attendance is significantly reduced because of storm, flood, failure of the heating plant, loss or damage to the school building, quarantine or order of any city, county or state health agency, or for reason believed by the board of trustees to be in the best interests of the health, safety or welfare of the pupils, the board of trustees having certified to the state department of education the cause and duration of such closure or impacted attendance, the average daily attendance for such day or days of closure or impacted attendance shall be considered as being the same as for the days when the school actually was in session or when attendance was not impacted. A decision by the state department to disallow such a consideration shall be subject to appeal to the state board of education.

For illness or accident that necessitates an absence from school for more than ten (10) consecutive school days, the school district may include homebound students in its total attendance, provided that academic instruction has been given by appropriate certified professional staff employed by the district.

### **History.**

I.C., § 33-1003A, as added by 1995, ch. 306, § 6, p. 1057.

## **STATUTORY NOTES**

### **Compiler's Notes.**

S.L. 1995, ch. 306, § 6, effective retroactive to July 1, 1994, and S.L. 1995, ch. 321, § 1, effective July 1, 1995, each purported to create a new § 33-1003A. Chapter 306, § 6 was compiled as § 33-1003A and ch. 321, § 1 was compiled as [33-1003B] 33-1003A. The redesignation of the section enacted by S.L. 1995, ch. 321 was made permanent by S.L. 2005, ch 25 and S.L. 2005, ch. 257, but that section was also repealed by S.L. 2005, ch. 255, § 10, effective July 1, 2006.

A former § 33-1003A which comprised I.C., § 33-1003A, as added by 1973, ch. 86, § 1, p. 136, was amended and redesignated as part of § 33-1003 by S.L. 1980, ch. 179, § 4 and later repealed by S.L. 2013, ch. 184, § 1..

**Effective Dates.**

Section 7 of S.L. 1995, ch. 306 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval and retroactively to July 1, 1994. Approved March 21, 1995.

**33-1003B. Special application — Minimum support. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 33-1003A**, as added by 1995, ch. 321, § 1, p. 1085; am. and redesign. 2005, ch. 25, § 48, p. 82; am. 2005, ch. 257, § 9, p. 789, was repealed by S.L. 2005, ch. 255, § 10, effective July 1, 2006.

A former § 33-1003B, which comprised **I.C., § 33-1003B**, as added by 1979, ch. 32, § 1, p. 47; am. 1979, ch. 254, § 7, p. 661, was amended and redesignated as part of § 33-1003 by S.L. 1980, ch. 179, § 4 and later repealed by S.L. 2013, ch. 184, § 1.

**33-1003C. Special application — Technological instruction.** — In order to acquire and maintain technology for individualized computer and/or distance learning programs, a school district may use students' documented contact hours on individualized computer education or distance learning programs in determining the district's average daily attendance, whether the student is actually in the computer lab or distance learning center, or has logged on to the computer from another location. A district's technology instruction programs shall be subject to the following provisions:

(1) The certification requirements for an alternative school using the individualized computer education or distance learning program may be met by having a properly certificated teacher available on a consultant tutorial basis. The consultant tutors will be available by telephone, fax, e-mail, or in person at the school site on a daily basis.

(2) Districts claiming average daily attendance pursuant to this section shall submit annual evaluations of the program to the state board of education.

(3) Districts may offer individualized computer education or distance learning programs on a calendar which may differ from the rest of the district's instruction, but in no case may a district claim more average daily attendance for a student than the full-time equivalency of a regular term of attendance for a single student.

(4) Nonalternative high school students may receive individualized computer education or distance learning instruction and credit through an alternative school site.

### **History.**

**I.C., § 33-1003C**, as added by 1998, ch. 273, § 1, p. 903; am. 2000, ch. 366, § 1, p. 1215; am. 2001, ch. 255, § 1, p. 921.

**33-1004. Staff allowance.** — For each school district, a staff allowance shall be determined as follows:

(1) Using the daily attendance reports that have been submitted for computing the February 15 apportionment of state funds as provided in [section 33-1009, Idaho Code](#), calculate the total support units for the district in the manner provided in [section 33-1002\(6\)\(a\), Idaho Code](#). If the support units used to calculate discretionary funding pursuant to sections 33-1009 and 33-1018, Idaho Code, are at least three percent (3%) greater, seventy-five percent (75%) of the difference shall be added to the support units used for the February 15 apportionment of state funds;

(2) Determine the instructional staff allowance by multiplying the support units by 1.021. A district must demonstrate that it actually employs the number of certificated instructional staff allowed, except as provided in subsection (6)(f) and (g) of this section. If the district does not employ the number allowed, the staff allowance shall be reduced to the actual number employed, except as provided in subsection (6)(f) and (g) of this section;

(3) Determine the pupil service staff allowance by multiplying the support units by 0.079;

(4) Determine the administrative staff allowance by multiplying the support units by .075;

(5) Determine the classified staff allowance by multiplying the support units by .375;

(6) Additional conditions governing staff allowance:

(a) In determining the number of staff in subsections (2), (3), (4) and (5) of this section, a district may contract separately for services to be rendered by nondistrict employees and such employees may be counted in the staff allowance. A “nondistrict employee” means a person for whom the school district does not pay the employer’s obligations for employee benefits. When a district contracts for the services of a nondistrict employee, only the salary portion of the contract shall be allowable for computations.

(b) If there are circumstances preventing eligible use of staff allowance to which a district is entitled as provided in subsections (2), (3) and (4) of this section, an appeal may be filed with the state department of education outlining the reasons and proposed alternative use of these funds, and a waiver may be granted.

(c) For any district with less than forty (40) support units:

(i) The instructional staff allowance shall be calculated applying the actual number of support units. If the actual instructional staff employed in the school year is greater than the instructional staff allowance, then the instructional staff allowance shall be increased by one-half ( $\frac{1}{2}$ ) staff allowance; and

(ii) The administrative staff allowance shall be calculated applying the actual number of support units. If the actual administrative staff employed in the school year is greater than the administrative staff allowance, then the administrative staff allowance shall be increased by one-half ( $\frac{1}{2}$ ) staff allowance.

(iii) Additionally, for any district with less than twenty (20) support units, the instructional staff allowance shall be calculated applying the actual number of support units. If the number of instructional staff employed in the school year is greater than the instructional staff allowance, the staff allowance shall be increased as provided in subparagraphs (i) and (ii) of this paragraph, and by an additional one-half ( $\frac{1}{2}$ ) instructional staff allowance.

(d) For any school district with one (1) or more separate secondary schools serving grades 9 through 12, the instructional staff allowance shall be increased by two (2) additional instructional staff allowances for each such separate secondary school.

(e) Only instructional, pupil service and administrative staff and classified personnel compensated by the school district from the general maintenance and operation fund of the district shall be included in the calculation of staff allowance or in any other calculations based upon staff, including determination of the experience and education multiplier, the reporting requirements, or the district's salary-based apportionment



calculation. No food service staff or transportation staff shall be included in the staff allowance.

(f) A district may utilize up to fifteen percent (15%) of the moneys associated with positions funded pursuant to subsection (2) of this section to pay another school district or public charter school for instructional services or to defray the cost of providing virtual education coursework, including virtual dual credit coursework, without a reduction in the number of funded positions being imposed.

(g) A district may employ nine and one-half percent (9.5%) fewer positions than funded pursuant to subsections (2) and (3) of this section, without a reduction in the number of funded positions being imposed. Beginning in fiscal year 2016, this figure shall be reduced by one percent (1%) each year for each school district in which the average class size, as determined from prior fiscal year data reported to the state department of education, was at least one (1) student greater than the statewide average class size. The state department of education shall report to the legislature every February, beginning in 2015, on the reductions scheduled to take place in this figure, by school district, in the ensuing fiscal year.

(i) In the determination of statewide average class size, the state department of education shall not use a single figure developed through the averaging of all districts of varying size, geographical location and pupil populations throughout the state. The statewide average class size shall be comprised of multiple figures determined through analysis of like and similarly situated districts and use of the divisor breakdown established in [section 33-1002, Idaho Code](#).

(ii) The state board of education may promulgate rules outlining the method of calculation of the statewide average class size figures.

(iii) The one percent (1%) reduction required in paragraph (g) of this subsection shall not be applicable for any school year subsequent to a year when the school district's boundaries have changed because of division, consolidation, excision or annexation of territory.

(7) In the event that the staff allowance in any category is insufficient to meet accreditation standards, a district may appeal to the state board of

education, demonstrating the insufficiency, and the state board may grant a waiver authorizing sufficient additional staff to be included within the staff allowance to meet accreditation standards. Such a waiver shall be limited to one (1) year, but may be renewed upon showing of continuing justification.

(8) A district may utilize a portion of the instructional staff allowance provided for in this section for kindergarten teachers to visit the parents or guardians of students during the first week of the kindergarten school year. Such visits may take place at school, at the student's home or at another location agreed to by the teacher and parents or guardians. The purpose of such visits is to help strengthen the working relationship between the teacher, the parents or guardians, and the student. The visits should be used as an opportunity to help establish the teacher's expectations of the student. The visit should also provide an opportunity for the parents or guardians to explain their expectations. The amount of moneys to be expended for such visits by the district may not exceed the amount equal to one (1) week of instructional staff allowance computed for kindergarten instructors in the district.

### **History.**

I.C., § 33-1004, as added by 1994, ch. 428, § 5, p. 1368; am. 1995, ch. 52, § 1, p. 119; am. 1995, ch. 271, § 1, p. 871; am. 1998, ch. 166, § 1, p. 561; am. 2003, ch. 375, § 5, p. 1002; am. 2006, ch. 412, § 1, p. 1249; am. 2006 (1st E.S.), ch. 1, § 11; am. 2009, ch. 340, § 1, p. 983; am. 2010, ch. 326, § 3, p. 863; am. 2013, ch. 148, § 1, p. 344; am. 2013, ch. 349, § 1, p. 948; am. 2014, ch. 116, § 2, p. 331; am. 2015, ch. 229, § 3, p. 701; am. 2016, ch. 123, § 1, p. 356; am. 2016, ch. 348, § 1, p. 1010.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 1995 acts which appear to be compatible and have been compiled together.

The 1995 amendment, by ch. 52, § 1, in subdivision 1. added "Using the daily attendance reports that have been submitted for computing the February 15th apportionment of state funds as provided in [section 33-1009, Idaho Code](#)" at the beginning of the subdivision; substituted "determine"

for “Determine”, and added “, Idaho Code” at the end of the subdivision; added a new clause 5. a. and renumbered former clauses a., b., and c. as present clauses b., c. and d.

The 1995 amendment, by ch. 271, § 2, added subdivision 6.

The 2006 amendment, by ch. 412, redesignated the subsections; added present subsection (5)(d).

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “section 33-1002 (6)(a)” for “section 33-1002 8.b.” at the end of Subsection (1).

The 2009 amendment, by ch. 340, in subsection (2), added the exception in the last two sentences; and added subsections (5)(f) and (5)(g).

The 2010 amendment, by ch. 326, substituted “five percent (5%)” for “two and sixty-three hundredths percent (2.63%)” in paragraph (5)(g).

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 148, added subsection (7).

The 2013 amendment, by ch. 349, substituted “(g) and (h)” for “and (g)” two times in subsection (2); in paragraph (5)(f), substituted “fifteen percent (15%)” for “five percent (5%)” and inserted “pay another school district or public charter school for instructional services or to”; and added paragraph (5)(h).

The 2014 amendment, by ch. 116, substituted “subsection (5)(f) and (g)” for “subsection (5)(f), (g) and (h)” twice in subsection (2); and, in subsection (5), deleted former paragraph (g), which read: “For the period July 1, 2009, through June 30, 2011, only, a district may shift up to five percent (5%) of the positions funded pursuant to subsection (2) of this section to federal funds, without a reduction in the number of funded positions being imposed”, redesignated former paragraph (h) as present paragraph (g), and added the last sentence in present paragraph (g).

The 2015 amendment, by ch. 229, substituted “calculate” for “determine” in subsection (1); in subsection (2), substituted “units by 1.021” for “units by 1.1” at the end of the first sentence and substituted “subsection (6)(f) and (g)” for “subsection (5)(f) and (g)” near the end of the second and third

sentences; added subsection (3), and redesignated the remaining subsections accordingly; and, in subsection (6), substituted “subsections (2), (3), (4) and (5)” for “subsections (2), (3) and (4)” in the first sentence of paragraph (a), substituted “subsections (2), (3) and (4)” for “subsections (2) and (3)” in paragraph (b), substituted “pupil service and administrative staff” for “administrative” near the beginning of paragraph (e), and substituted “subsections (2) and (3)” for “subsection (2)” in the first sentence in paragraph (g).

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 123, added paragraphs (6)(g)(i) through (6)(g)(iii).

The 2016 amendment, by ch. 348, added the last sentence in subsection (1)

### **Compiler’s Notes.**

Former § 33-1004 was amended and redesignated as § 33-1002E by S.L. 1994, ch. 428, § 4.

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

Section 4 of S.L. 2009, ch. 340 purported to repeal this section and section 5 of that act enacted a new § 33-1004, effective July 1, 2011, but sections 4 and 5 of S.L. 2009, ch. 340 were repealed by sections 1 and 2 of S.L. 2009, ch. 342.

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, ch. 300, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

This section was to be repealed effective July 1, 2014, pursuant to S.L. 2013, ch. 349, § 2, at which time a new § 33-1004 was to be enacted, pursuant to S.L. 2013, ch. 349, § 3. However, sections 2 and 3 of S.L. 2013, ch. 349, were repealed by S.L. 2014, ch. 116, § 1.

This section was to be repealed effective July 1, 2019, pursuant to S.L. 2016, ch. 348, § 2, at which time a new version of this section would have come into effect. However, S.L. 2019, ch. 174, §§ 1 to 3 repealed S.L. 2016, ch. 348, §§ 2 to 4, effective July 1, 2019.

### **Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

Section 2 of S.L. 1995, ch. 52, declared an emergency and provided that this act shall be in full force and effect on and after March 7, 1995, and retroactively to January 1, 1995. Approved March 7, 1995.

Section 6 of S.L. 2009, ch. 340, as amended by S.L. 2009, ch. 342, § 3, provides that sections 1 and 2 of the act should take effect on and after July 1, 2009.

Section 6 of S.L. 2010, ch. 326 provided that sections 3, 4, and 5 of that act should take effect on and after July 1, 2010.

Section 4 of S.L. 2013, ch. 349 provided: “The provisions of Section 1 [this section] of this act shall be in full force and effect on and after July 1, 2013. The provisions of sections 2 and 3 of this act shall be in full force and effect on and after July 1, 2014.” However, sections 2, 3, and 4 of S.L.

2013, ch. 349 were repealed by S.L. 2014, ch. 116, § 1, effective July 1, 2014.

**33-1004A. Experience and education multiplier.** — (1) Each administrative staff position shall be assigned an appropriate multiplier based upon the following table:

Years	BA	BA + 12	BA + 24	MA BA + 36	MA + 12 BA + 48	MA + 24 BA + 60	MA + 36 ES/DR
0	1.00000	1.03750	1.07640	1.11680	1.15870	1.20220	1.24730
1	1.03750	1.07640	1.11680	1.15870	1.20220	1.24730	1.29410
2	1.07640	1.11680	1.15870	1.20220	1.24730	1.29410	1.34260
3	1.11680	1.15870	1.20220	1.24730	1.29410	1.34260	1.39290
4	1.15870	1.20220	1.24730	1.29410	1.34260	1.39290	1.44510
5	1.20220	1.24730	1.29410	1.34260	1.39290	1.44510	1.49930
6	1.24730	1.29410	1.34260	1.39290	1.44510	1.49930	1.55550
7	1.29410	1.34260	1.39290	1.44510	1.49930	1.55550	1.61380
8	1.34260	1.39290	1.44510	1.49930	1.55550	1.61380	1.67430
9	1.39290	1.44510	1.49930	1.55550	1.61380	1.67430	1.73710
10	1.39290	1.49930	1.55550	1.61380	1.67430	1.73710	1.80220
11	1.39290	1.49930	1.55550	1.61380	1.73710	1.80220	1.86980
12	1.39290	1.49930	1.55550	1.61380	1.73710	1.86980	1.93990
13 or more	1.39290	1.49930	1.55550	1.61380	1.73710	1.86980	2.01260

(2) In determining the experience factor, the actual years of certificated service as pupil personnel services staff, teaching and administrative service for administrator certificate holders in a public school, in an accredited private or parochial school, or beginning in the 2005-06 school year and thereafter in an accredited college or university shall be credited.

(3) In determining the education factor, only credits earned after initial certification, based upon a transcript on file with the teacher certification office of the state department of education, earned at an institution of higher education accredited by a body recognized by the state board of education, shall be allowed; however, successful completion of a state approved evaluation training and proof of proficiency shall be counted as up to three (3) transcribed credits for determination of the education factor and meeting recertification requirements.

(4) In determining the statewide average multiplier for administrative staff, no multiplier in excess of 1.86643 shall be used. If the actual statewide average multiplier for administrative staff, as determined by this section, exceeds 1.86643, then each school district's administrative staff multiplier shall be multiplied by the result of 1.86643 divided by the actual statewide average multiplier for administrative staff.

## **History.**

**I.C., § 33-1004A**, as added by 1994, ch. 428, § 6, p. 1368; am. 2000, ch. 67, § 1, p. 151; am. 2003, ch. 371, § 4, p. 983; am. 2003, ch. 375, § 4, p. 1002; am. 2004, ch. 341, § 4, p. 1015; am. 2006, ch. 260, § 1, p. 799; am. 2008, ch. 158, § 1, p. 455; am. 2009, ch. 285, § 1, p. 858; am. 2010, ch. 234, § 32, p. 531; am. 2013, ch. 267, § 1, p. 694; am. 2013, ch. 326, § 11, p. 850; am. 2015, ch. 229, § 4, p. 701; am. 2016, ch. 245, § 2, p. 642.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 371, § 4, added the paragraph relating to the statewide average multiplier for instructional staff.

The 2003 amendment, by ch. 375, § 4, added the paragraph relating to the statewide average multiplier for administrative staff.

The 2006 amendment, by ch. 260, inserted “or beginning in the 2005-06 school year and thereafter in an accredited college or university” following “parochial school” in the second paragraph.

The 2008 amendment, by ch. 158, in the first paragraph following the table, deleted “an accredited” preceding “public school.”

The 2009 amendment, by ch. 285, in the paragraph following the table, added “minus one (1); provided however, that the experience factor cannot be less than zero (0).”

The 2010 amendment, by ch. 234, in the first paragraph following the table, substituted “minus two (2)” for “minus one (1)”; and added the last sentence in the second paragraph following the table.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 267, deleted the former last sentence of the third paragraph, which read, “For the time period July 1, 2010, through



June 30, 2011, instructional and administrative staff shall not advance on the education portion of the multiplier table.”

The 2013 amendment, by ch. 326, deleted “minus two (2); provided however, that the experience factor cannot be less than zero (0)” at the end of the second paragraph.

The 2015 amendment, by ch. 229, rewrote the section to the extent that a detailed comparison is impracticable.

The 2016 amendment, by ch. 245, deleted “pupil service and” following “Each” in the introductory paragraph of subsection (1); substituted “service as pupil personnel services staff, teaching” for “service for pupil service staff, or teaching” in subsection (2); and deleted former subsection (5), which read: “Notwithstanding any other law to the contrary, on and after July 1, 2016, pupil service staff shall be deemed instructional staff for purposes of sections 33-1004B and 33-1004I, Idaho Code”.

### **Legislative Intent.**

Section 15 of S.L. 2010, ch. 234 provided “It is legislative intent that public school employee benefits paid by the state, pursuant to [Section 33-1004F, Idaho Code](#), be paid for all eligible employees that a school district or charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff.”

Section 25 of S.L. 2010, ch. 234 provided “It is legislative intent that school districts continuing to use discretionary funds for safe and drug-free purposes may include the following:

“(1) Prevention programs, student assistance programs that address early identification and referral, and aftercare.

“(2) An advisory board to assist each district in making decisions relating to their program.”

### **Compiler’s Notes.**

For additional information on the certification office in the Idaho department of education, referred to in subsection (3), see <https://www.sde.idaho.gov/cert-psc/cert>.

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, ch. 300, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

Section 2 of S.L. 2009, ch. 285 provided “The Legislature recognizes that school districts and public charter schools will receive funding for salaries in Fiscal Year 2010, and encourages school districts and public charter schools to accommodate such reductions by either reducing the amount paid per employee, reducing the number of contract days, or both. Those choosing to reduce contract days shall make such reductions without impacting student-teacher contact time.”

### **Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

Section 2 of S.L. 2008, ch. 158 declared an emergency retroactively to July 1, 2007 and approved March 17, 2008.

Section 8 of S.L. 2013, ch. 340 declared an emergency. Approved April 11, 2013.

**33-1004B. Career ladder.** — School districts shall receive an allocation for instructional staff and pupil service staff based on their staffs' position on the career ladder as follows:

(1) Instructional staff and pupil service staff who are in their first year of holding a certificate shall be placed in the first cell of the residency compensation rung and shall move one (1) cell on the residency compensation rung for each year they hold a certificate thereafter for up to three (3) years, at which point they will remain in the third cell of the residency rung until they earn a professional endorsement.

(2) Instructional staff and pupil service staff in their first year of holding a professional endorsement shall be placed in the first cell of the professional compensation rung.

(3) Instructional staff and pupil service staff on the professional compensation rung with four (4) years of experience shall move one (1) cell on the professional compensation rung unless they have failed to meet the professional compensation rung performance criteria for three (3) of the previous four (4) years. Instructional staff and pupil service staff on the professional compensation rung who meet the performance criteria for three (3) of the previous five (5) years, one (1) of which must be during the fourth or fifth year, shall move one (1) cell. Allocations for instructional staff and pupil service staff who do not meet the professional compensation rung performance criteria for three (3) of the previous five (5) years, one (1) of which must be during the fourth or fifth year, shall remain at the previous fiscal year allocation level. This also applies to the educational allocation.

(4) Instructional staff and pupil service staff in their first year of holding an advanced professional endorsement shall be placed in the first cell of the advanced professional compensation rung.

(5) Instructional staff and pupil service staff on the advanced professional compensation rung who met the performance criteria for the advanced professional rung in the previous year shall move one (1) cell on the advanced professional compensation rung. Allocations for instructional staff and pupil service staff who do not meet the advanced professional

compensation rung performance criteria shall remain at the previous fiscal year allocation level. This also applies to the additional education allocation.

[(6)] Career technical education instructional staff holding an occupational specialist certificate shall be placed on the career ladder as follows:

(a) Instructional staff new to working in an Idaho public school:

(i) With two (2) or three (3) years of industry experience in a field closely related to the subjects they seek to teach shall be placed in an equivalent cell to instructional staff who have been on the career ladder and met the movement requirements for one (1) year;

(ii) With four (4) or five (5) years of industry experience in a field closely related to the subjects they seek to teach shall be placed in an equivalent cell to instructional staff who have been on the career ladder and met the movement requirements for two (2) years;

(iii) With six (6) or seven (7) years of industry experience in a field closely related to the subjects they seek to teach shall be placed in an equivalent cell to instructional staff who have been on the career ladder and met the movement requirements for three (3) years; and

(iv) With eight (8) or more years of industry experience in a field closely related to the subjects they seek to teach shall be placed in an equivalent cell to instructional staff who have been on the career ladder and met the movement requirements for four (4) years; and

(b) Existing career technical education instructional staff on the residency compensation rung shall have their placement updated consistent with the provisions of paragraph (a) of this subsection if the update would result in a rung higher than their current placement.

[(7)](6) In addition to the allocation amount specified for the applicable cell on the career ladder, school districts shall receive an additional allocation amount for career technical education instructional staff holding an occupational specialist certificate in the area for which they are teaching in the amount of three thousand dollars (\$3,000), which shall be designated for career technical education staff and included as part of their salary.

[(8)](7) In addition to the allocation amount specified for the applicable cell on the career ladder, school districts shall receive an additional allocation amount for instructional staff and pupil service staff holding a professional or an advanced professional endorsement who have acquired additional education and meet the professional or advanced professional compensation rung performance criteria. In determining the additional education allocation amount, only transcribed credits and degrees on file with the teacher certification office of the state department of education, earned at an institution of higher education accredited by a body recognized by the state board of education or credits earned through an internship or work experience approved by the state board of education, shall be allowed. All credits and degrees earned must be in a relevant pedagogy or content area as determined by the state department of education. Additional education allocation amounts are not cumulative. Instructional staff whose initial certificate is an occupational specialist certificate shall be treated as BA degree-prepared instructional staff. Credits earned by such occupational specialist instructional staff after initial certification shall be credited toward the education allocation. Additional education allocations are:

(a) For instructional staff and pupil service staff holding a professional or an advanced professional endorsement, a baccalaureate degree and twenty-four (24) or more credits, two thousand dollars (\$2,000) per fiscal year.

(b) For instructional staff and pupil service staff holding a professional or an advanced professional endorsement and a master's degree, three thousand five hundred dollars (\$3,500) per fiscal year.

(c) Effective July 1, 2020, the allocation shall be:

<b>Base Allocation</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Residency	\$40,000	\$40,500	\$41,000		
Professional	\$42,500	\$44,375	\$46,250	\$48,125	\$50,000
Advanced Professional	\$52,000				

(d) Effective July 1, 2021, the allocation shall be:

<b>Base Allocation</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Residency	\$40,369	\$40,990	\$41,611		
Professional	\$42,991	\$44,836	\$46,681	\$48,526	\$50,370
Advanced Professional	\$52,734	\$53,207			

(e) Effective July 1, 2022, the allocation shall be:

<b>Base Allocation</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Residency	\$40,742	\$41,486	\$42,231		
Professional	\$43,488	\$45,302	\$47,116	\$48,930	\$50,743
Advanced Professional	\$53,478	\$54,442	\$55,389		

(f) Effective July 1, 2023, the allocation shall be:

<b>Base Allocation</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Residency	\$41,118	\$41,988	\$42,860		
Professional	\$43,990	\$45,773	\$47,555	\$49,337	\$51,119
Advanced Professional	\$54,233	\$55,705	\$57,165	\$58,613	

(g) Effective July 1, 2024, the allocation shall be:

<b>Base Allocation</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Residency	\$41,500	\$42,500	\$43,500		
Professional	\$44,500	\$46,250	\$48,000	\$49,750	\$51,500
Advanced Professional	\$55,000	\$57,000	\$59,000	\$61,000	\$63,000

[(9)](8) Effective July 1, 2025, the educator salary-based apportionment program compensation rung cell amounts shall be adjusted by an amount equivalent to the salary-based apportionment adjustment for administrative and classified staff positions.

[(10)](9) A review of a sample of evaluations completed by administrators shall be conducted annually to verify such evaluations are being conducted with fidelity to the state framework for teaching evaluation, including each domain and identification of which domain or domains the administrator is focusing on for the instructional staff or pupil service staff member being evaluated, as outlined in administrative rule. The review shall be completed prior to November 1 of each year. The state board of education shall randomly select a sample of administrators

throughout the state. A portion of such administrators' instructional staff and pupil service staff employee evaluations shall be independently reviewed. The ratio of instructional staff evaluations to pupil service staff evaluations shall be equal to the ratio of the statewide instructional staff salary allowance to pupil service staff salary allowance. The state board of education with input from the Idaho-approved teacher preparation programs and the state department of education shall identify individuals and a process to conduct the reviews. Administrator certificate holders shall be required to participate in ongoing evaluation training pursuant to [section 33-1204, Idaho Code](#). School districts and public charter schools found to have not conducted the evaluations with fidelity to the state framework for teaching evaluation shall not be eligible to receive the leadership premium distribution pursuant to [section 33-1002\(2\), Idaho Code](#). The state board of education shall report annually the findings of such reviews to the senate education committee, the house of representatives education committee, the state board of education and the deans of Idaho's approved teacher preparation programs. The state board of education shall promulgate rules implementing the provisions of this subsection.

[(11)](10) School districts shall submit annually to the state the data necessary to determine if an instructional staff or pupil service staff member has met the performance criteria for movement on the applicable compensation rung. Such data shall include the individuals' performance on each of the performance criteria as defined in [section 33-1001, Idaho Code](#), including the percentage of students meeting their measurable student achievement and student success indicator targets. The department of education shall calculate whether or not instructional staff and pupil service staff have met the compensation rung performance criteria based on the data submitted during the previous five (5) years. Individually identifiable performance evaluation ratings submitted to the state remain part of the employee's personnel record and are exempt from public disclosure pursuant to [section 74-106, Idaho Code](#).

### **History.**

[I.C., § 33-1004B](#), as added by 2015, ch. 229, § 6, p. 701; am. 2016, ch. 245, § 4, p. 642; am. 2016, ch. 352, § 2, p. 1038; am. 2018, ch. 169, § 5, p. 344; am. 2019, ch. 132, § 2, p. 467; am. 2020, ch. 151, § 1, p. 450; am. 2020, ch. 270, § 2, p. 782; am. 2020, ch. 272, § 2, p. 795.

## STATUTORY NOTES

### **Amendments.**

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 245, § 6, inserted “and pupil service staff” throughout; deleted “instructional” Following “based on their” in the introductory paragraph; rewrote subsection (5), which read: “A review of a sample of evaluations completed by administrators shall be conducted annually to verify such evaluations are being conducted with fidelity to the state framework for teaching evaluation. The state department of education shall randomly select a sample of administrators throughout the state. A portion of such administrators’ instructional staff employee evaluations shall be independently reviewed. The state department of education shall appoint persons to conduct the reviews. Administrator certificate holders shall be required to participate in ongoing evaluation training pursuant to [section 33-1204, Idaho Code](#). The state department of education shall report annually the findings of such reviews to the senate education committee, the house of representatives education committee, the state board of education and the deans of Idaho’s approved teacher preparation programs. The state board of education shall promulgate rules implementing the provisions of this subsection”; and added subsection (6).

The 2016 amendment, by ch. 352, § 2, added present subsection (4) and redesignated the subsequent provisions accordingly.

The 2018 amendment, by ch. 169, substituted “master’s degree” for “master degree” in paragraph (5)(b) and redesignated the last paragraph of the section as subsection (7), correcting an issue created by the multiple 2016 amendments of this section.

The 2019 amendment, by ch. 132, substituted “\$40,000” for “\$37,000”, “\$40,500” for “\$38,000”, and “\$41,000” for “\$39,000” in the table in paragraph (5)(c).

This section was amended by three 2020 acts which appear to be compatible and have been compiled together.



The 2020 amendment, by ch. 151, added present subsection (6) and redesignated the subsequent subsections accordingly; and added “which shall be designated for career technical education staff and included as part of their salary” at the end of subsection (7).

The 2020 amendment, by ch. 270, added present subsections (4), (5), and (8) and redesignated the remaining subsections accordingly; in present subsection (8), in the introductory paragraph, inserted “or an advanced professional” twice in the first sentence and inserted “education” near the beginning of the last sentence, inserted “or an advanced professional” near the beginnings of paragraphs (a) and (b), added the “Advanced Professional” entry in the table in paragraph (c), and added paragraphs (d) to (g); and, in subsection (10), substituted “domain and identification of which domain or domains the administrator is focusing on for the instructional staff or pupil service staff member being evaluated, as outlined in administrative rule” for “evaluation component as outlined in administrative rule and the rating given for each component” at the end of the first sentence and added the present eighth sentence.

The 2020 amendment, by ch. 272, inserted the present second sentence in subsection (10) and added the present second sentence in subsection (11).

### **Compiler’s Notes.**

For additional information on the certification office in the Idaho department of education, referred to in subsection (8), see <https://www.sde.idaho.gov/cert-psc/cert>.

### **Effective Dates.**

Section 15 of S.L. 2015, ch. 229 provided: “The provisions of Section 6 of this act shall be in full force and effect on and after July 1, 2020.”

Section 3 of S.L. 2016, ch. 352 provided that the amendment of this section by section 2 of that act should take effect on and after July 1, 2020.

Section 26 of S.L. 2018, ch. 169 provided that section 5 of the act should take effect on and after July 1, 2020.

**33-1004C. Base and minimum salaries — Leadership premiums — Education and experience index.** — (1) The following shall be reviewed annually by the legislature:

- (a) The base salary figures pursuant to subsections (6) and (7) of [section 33-1004E, Idaho Code](#);
- (b) The minimum instructional and pupil service staff salary figure pursuant to subsections (1) through (5) of [section 33-1004E, Idaho Code](#); and
- (c) The leadership premium figures pursuant to subsections (1) and (2) of [section 33-1004J, Idaho Code](#).

(2) The statewide education and experience index (or state average index, or state index) is the average of all qualifying employees, instructional and administrative respectively. It is determined by totaling the index value for all qualifying employees and dividing by the number of employees.

#### **History.**

[I.C., § 33-1004C](#), as added by 1994, ch. 428, § 7, p. 1368; am. 2014, ch. 83, § 3, p. 228; am. 2015, ch. 229, § 7, p. 701; am. 2016, ch. 245, § 5, p. 642; am. 2020, ch. 270, § 3, p. 782.

### **STATUTORY NOTES**

#### **Amendments.**

The 2014 amendment, by ch. 83, rewrote the section heading and the section which formerly read: “Base salary — Education and experience index. The base salary shall be reviewed annually by the legislature. The statewide education and experience index (or state average index, or state index) is the average of all qualifying employees, instructional and administrative respectively. It is determined by totaling the index value for all qualifying employees and dividing by the number of employees”.

The 2015 amendment, by ch. 229, substituted “subsections (1), (2), (3) and (4)” for “subsections 1., 2., and 3.” in paragraph (1)(a).

The 2016 amendment, by ch. 245, in subsection (1), substituted “(4) and (5)” for “(1), (2), (3), and (4)” in paragraph (a) and substituted “(1) and (3)” for “(1)” and inserted “and pupil service staff” in paragraph (b).

The 2020 amendment, by ch. 270, in subsection (1), substituted “subsections (6) and (7)” for “subsections (4) and (5)” in paragraph (a) and substituted “subsections (1) through (5)” for “subsections (1) and (3)” in paragraph (b).

### **Legislative Intent.**

Section 1 of S.L. 2014, ch. 83 provides: “Legislative Intent. It is the intent of the Legislature to support and implement the recommendation of the 2013 Task Force for Improving Education regarding leadership awards and the career ladder compensation model (Task Force Summary Recommendation 12 and Fiscal Stability/Effective Teachers and Leaders Subcommittee Recommendation 1.2).”

### **Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

**33-1004D. Reporting — Idaho basic educational data system.** — For each employee of the school district, a report shall be made in a format prescribed by the state superintendent of public instruction, which shall include sufficient identifying information to provide individual verification, education, teaching experience, and other district employment information. The form shall be filed with the state department of education not later than October 15 of each school year. Provided however, that the department may accept data for instructional employees hired prior to January 1 of each year if the position was advertised as open on the school district website prior to October 15, and no qualified applications were received prior to that date.

**History.**

**I.C., § 33-1004D**, as added by 1994, ch. 428, § 8, p. 1368; am. 2014, ch. 271, § 1, p. 677.

**STATUTORY NOTES**

**Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

**Amendments.**

The 2014 amendment, by ch. 271, added the last sentence in the section.

**Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-

1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

**33-1004E. District's salary-based apportionment.** — Each district shall be entitled to a salary-based apportionment calculated as provided in this section.

(1) To determine the apportionment for instructional staff, take the amounts indicated on the career ladder table plus the amounts associated with the additional education allocation amounts pursuant to [section 33-1004B, Idaho Code](#), and calculate the weighted average. The amount so determined shall be multiplied by the district staff allowance for instructional staff determined as provided in [section 33-1004\(2\), Idaho Code](#). Full-time instructional staff salaries shall be determined from a salary schedule developed by each district and submitted to the state department of education. No full-time instructional staff member or pupil service staff member on the residency compensation rung shall be paid less than the minimum dollar amount on the career ladder residency compensation rung pursuant to [section 33-1004B, Idaho Code](#), for the applicable fiscal year.

(2) Effective July 1, 2022, no full-time instructional staff member or pupil service staff member on the professional or advanced professional compensation rung shall be paid less than the minimum dollar amount on the career ladder professional compensation rung pursuant to [section 33-1004B, Idaho Code](#), for the applicable fiscal year.

(3) Effective July 1, 2025, no full-time instructional staff member or pupil service staff member on the advanced professional compensation rung shall be paid less than the minimum dollar amount on the advanced professional compensation rung pursuant to [section 33-1004B, Idaho Code](#), for the applicable fiscal year.

(4) If an instructional staff member has been certified by the national board for professional teaching standards, the staff member shall receive two thousand dollars (\$2,000) per year for five (5) years from the year in which national board certification was earned. The district staff allotment shall be increased by two thousand dollars (\$2,000) for each national board-certified instructional staff member who earned national board certification; provided however, that no such awards shall be paid for the period July 1, 2010, through June 30, 2011, nor shall any liabilities accrue or payments be

made pursuant to this section in the future to any individuals who would have otherwise qualified for a payment during this stated time period. The resulting amount is the district's salary-based apportionment for instructional staff. For purposes of this section, teachers qualifying for the salary increase shall be those who have been recognized as national board-certified teachers as of July 1 of each year.

(5) To determine the apportionment for pupil service staff, take the amounts indicated on the career ladder table plus the amounts associated with the additional education allocation amounts pursuant to [section 33-1004B, Idaho Code](#), and calculate the weighted average. If the district does not employ any pupil service staff, the district's pupil service staff average salary shall equal the district's instructional staff average salary for purposes of calculating pupil service salary-based apportionment. The amount so determined shall be multiplied by the district staff allowance for pupil service staff determined pursuant to [section 33-1004\(3\), Idaho Code](#). Full-time pupil service staff salaries shall be determined from a salary schedule developed by each district and submitted to the state department of education. The resulting amount is the district's salary-based apportionment for pupil service staff. No full-time pupil service staff member shall be paid less than the minimum dollar amount on the career ladder residency compensation rung pursuant to [section 33-1004B, Idaho Code](#), for the applicable fiscal year.

(6) To determine the apportionment for district administrative staff, first determine the district average experience and education index by placing all eligible certificated administrative employees on the statewide index provided in [section 33-1004A, Idaho Code](#). The resulting average is the district index. If the district does not employ any administrative staff, the district administrative index shall equal the statewide average index for purposes of calculating administrative salary-based apportionment. The district administrative staff index shall be multiplied by the base salary of thirty-eight thousand seventeen dollars (\$38,017). The amount so determined shall be multiplied by the district staff allowance for administrative staff determined as provided in [section 33-1004\(4\), Idaho Code](#). The resulting amount is the district's salary-based apportionment for administrative staff.

(7) To determine the apportionment for classified staff, multiply twenty-two thousand seven hundred sixty-one dollars (\$22,761) by the district classified staff allowance determined as provided in [section 33-1004\(5\), Idaho Code](#). The amount so determined is the district's apportionment for classified staff.

(8) The district's salary-based apportionment shall be the sum of the apportionments calculated in subsections (1), (4), (5), (6) and (7) of this section, plus the benefit apportionment as provided in [section 33-1004F, Idaho Code](#).

### **History.**

[I.C., § 33-1004E](#), as added by 2016, ch. 245, § 8, p. 642; am 2016, ch. 257, § 4, p. 676; am. 2016, ch. 306, § 4, p. 862; am. 2017, ch. 252, § 4, p. 623; am. 2017, ch. 254, § 4, p. 626; am. 2018, ch. 229, § 4, p. 538; am. 2018, ch. 283, § 4, p. 669; am. 2019, ch. 119, § 4, p. 445; am. 2019, ch. 121, § 4, p. 448; am. 2020, ch. 270, § 4, p. 782; am. 2020, ch. 272, § 3, p. 795; am. 2020, ch. 298, § 4, p. 867; am. 2020, ch. 300, § 4, p. 871.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-1004E, which comprised [I.C., § 33-1004E](#), as added by 1994, ch. 428, § 9, p. 1368; am. 1996, ch. 77, § 11, p. 242; am. 1998, ch. 363, § 5, p. 1138; am. 1999, ch. 350, § 1, p. 936; am. 1999, ch. 386, § 5, p. 1075; am. 2001, ch. 359, § 5, p. 1263; am. 2001, ch. 389, § 1, p. 1368; am. 2004, ch. 341, § 5, p. 1015; am. 2004, ch. 342, § 9, p. 1019; am. 2006, ch. 417, § 7, p. 1288; am. 2006, ch. 418, § 8, p. 1291; am. 2006, ch. 420, § 5, p. 1300; am. 2007, ch. 90, § 15, p. 246; am. 2007, ch. 350, § 5, p. 1028; am. 2007, ch. 351, § 8, p. 1035; am. 2007, ch. 352, § 9, p. 1039; am. 2008, ch. 362, § 5, p. 991; am. 2008, ch. 363, § 8, p. 994; am. 2008, ch. 391, § 8, p. 1075; am. 2009, ch. 270, § 5, p. 813; am. 2009, ch. 271, § 8, p. 816; am. 2009, ch. 272, § 9, p. 818; am. 2010, ch. 234, § 17, p. 531; am. 2011, ch. 332, § 11, p. 970; am. 2012, ch. 293, § 13, p. 809; am. 2013, ch. 326, § 12, p. 850; am. 2014, ch. 221, § 4, p. 576; am. 2014, ch. 222, § 4, p. 578; am. 2014, ch. 329, § 4, p. 817; am. 2015, ch. 229, § 8, p. 701; am. 2015, ch. 319, § 4, p. 1237; am. 2015, ch. 320, § 4, p. 1239; am. 2015, ch. 321, § 4, p. 1242, was repealed by S.L. 2016, ch. 245, § 7.



## **Amendments.**

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 257, substituted “thirty-four thousand one hundred nine dollars (\$34,109)” for “thirty-three thousand one hundred sixteen dollars (\$33,116)” at the end of the fourth sentence in subsection (4).

The 2016 amendment, by ch. 306, substituted “twenty thousand four hundred twenty-one dollars (\$20,421)” for “nineteen thousand eight hundred twenty-six dollars (\$19,826)” in the first sentence in subsection (5).

This section was amended by two 2017 acts which appear to be compatible and have been compiled together.

The 2017 amendment, by ch. 252, substituted “thirty-five thousand one hundred thirty-two dollars (\$35,132)” for “thirty-four thousand one hundred nine dollars (\$34,109)” at the end of the fourth sentence in subsection (4).

The 2017 amendment, by ch. 254, substituted “twenty-one thousand thirty-four dollars (\$21,034)” for “twenty thousand four hundred twenty-one dollars (\$20,421)” near the middle of the first sentence in subsection (5).

This section was amended by two 2018 acts which appear to be compatible and have been compiled together.

The 2018 amendment, by ch. 229, substituted “thirty-six thousand one hundred eighty-six dollars (\$36,186)” for “thirty-five thousand one hundred thirty-two dollars (\$35,132)” at the end of the fourth sentence in subsection (4).

The 2018 amendment, by ch. 283, substituted “twenty-one thousand six hundred sixty-five dollars (\$21,665)” for “twenty-one thousand thirty-four dollars (\$21,034)” near the middle of the first sentence in subsection (5).

This section was amended by two 2019 acts which appear to be compatible and have been compiled together.

The 2019 amendment, by ch. 119, rewrote the fourth sentence in subsection (4), which formerly read: “The district administrative staff index

shall be multiplied by the base salary of thirty-six thousand one hundred eighty-six dollars (\$36,186).”

The 2019 amendment, by ch. 121, rewrote the first sentence in subsection (5), which formerly read: “To determine the apportionment for classified staff, multiply twenty-one thousand six hundred sixty-five dollars (\$21,665) by the district classified staff allowance determined as provided in [section 33-1004\(5\), Idaho Code](#).”

This section was amended by four 2020 acts which appear to be compatible and have been compiled together.

The 2020 amendment, by ch. 270, added present subsections (2) and (3) and redesignated the remaining subsections accordingly; and inserted “or pupil service staff member on the residency compensation rung” near the beginning of the last sentence in subsection (1).

The 2020 amendment, by ch. 272, substituted “subsections (1), (4), (5), (6) and (7) of this section” for “subsections (1), (2), (3), (4) and (5) of this section” near the middle of present subsection (8).

The 2020 amendment, by ch. 298, substituted “thirty-eight thousand seventeen dollars (\$38,017)” for “thirty-seven thousand two hundred seventy-two dollars (\$37,272) at the end of the fourth sentence in present subsection (6).

The 2020 amendment, by ch. 300, substituted “twenty-two thousand seven hundred sixty-one dollars (\$22,761)” for “twenty-two thousand three hundred fifteen dollars (\$22,315)” near the beginning of present subsection (7).

### **Compiler’s Notes.**

S.L. 2016, ch. 245, § 12 made an amendment to this section by § 6 of that same act effective March 28, 2016. Section 7 of S.L. 2016, ch. 245 repealed this section effective July 1, 2016 and section 8 of S.L. 2016, ch. 245 enacted a new section, effective July 1, 2016.

For additional information on the national board for professional teaching standards, referred to in the first sentence in subsection (4), see <http://www.nbpts.org>.

**33-1004F. Obligations to retirement and social security benefits. —**

Based upon the actual salary-based apportionment, as determined in section 33-1004E, Idaho Code, the master educator premiums distributed pursuant to section 33-1004I, Idaho Code, and the leadership premiums distributed pursuant to section 33-1004J, Idaho Code, there shall be allocated that amount required to meet the employer's obligations to the public employee retirement system and to social security.

**History.**

I.C., § 33-1004F, as added by 1994, ch. 428, § 10, p. 1368; am. 2013, ch. 338, §§ 3, 4, p. 877; am. 2014, ch. 83, § 4, p. 228; am. 2015, ch. 229, § 9, p. 701; am. 2017, ch. 92, § 2, p. 239.

**STATUTORY NOTES**

**Cross References.**

Public employee retirement system, § 59-1301 et seq.

**Amendments.**

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 338, § 3, deleted the subsection 1. designation, inserted the last sentence, and deleted former subsection 2., which read: "If a district's qualifying salaries total more than the district's salary-based apportionment, there shall be allocated an additional amount to meet the employer's obligation to the public employee retirement system and to social security equal to two-thirds (2/3) of the additional obligation for the school year 1994-95. If a district's qualifying salaries total more than the district's salary-based apportionment, there shall be allocated an additional amount to meet the employer's obligation to the public employee retirement system and to social security equal to one-third (1/3) of the additional obligation for the school year 1995-96. Thereafter, the benefit allocation shall be based solely upon the provisions of subsection 1. of this section."

The 2013 amendment, by ch. 338, § 4, in subsection 1, added the subsection 1 designation and deleted the last sentence, which read: “In addition, from the moneys distributed pursuant to [section 33-1004J, Idaho Code](#), there shall be allocated the portion required to meet the employer’s obligations to the public employee retirement system and to social security for the remainder of the moneys so distributed”; and added subsection 2.

The 2014 amendment, by ch. 83, deleted the former subsection 1. designation and inserted “and the leadership premiums distributed pursuant to [section 33-1004J, Idaho Code](#)” and deleted former subsection 2., which related to allocations to the public employee retirement system and social security for school year 1995-96.

The 2015 amendment, by ch. 229, inserted “the master teacher premiums distributed pursuant to [section 33-1004I, Idaho Code](#)”.

The 2017 amendment, by ch. 92, substituted “master educator” for “master teacher”.

### **Legislative Intent.**

Section 4 of S.L. 2006, ch. 420 provides: “It is legislative intent that public school employee benefits paid by the state, pursuant to [Section 33-1004F, Idaho Code](#), be paid for all eligible employees that a school district or public charter school actually employs with its salary based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff.”

Section 1 of S.L. 2014, ch. 83 provides: “Legislative Intent. It is the intent of the Legislature to support and implement the recommendation of the 2013 Task Force for Improving Education regarding leadership awards and the career ladder compensation model (Task Force Summary Recommendation 12 and Fiscal Stability/Effective Teachers and Leaders Subcommittee Recommendation 1.2).”

### **Compiler’s Notes.**

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L.

2012, ch. 267, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

### **Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

Section 9 of S.L. 2013, ch. 338 provided that sections 1, 3, 5, 6, and 8 of the act should take effect July 1, 2013, and that sections 2, 4, and 7 of the act should take effect July 1, 2014.

Section 15 of S.L. 2015, ch. 229 provided that the amendment of this section should take effect on and after July 1, 2019.

Section 3 of S.L. 2017, ch. 92 provided that the amendment of this section should take effect on and after July 1, 2019.

**33-1004G. Early retirement incentive — Administrative staff excluded.  
[Repealed.]**

Repealed by S.L. 2013, ch. 97, § 1, effective March 21, 2013.

**History.**

**I.C., § 33-1004G**, as added by 1996, ch. 143, § 1, p. 472; am. 1997, ch. 145, § 1, p. 420; am. 1999, ch. 335, § 1, p. 911; am. 2000, ch. 167, § 1, p. 418; am. 2000, ch. 266, § 5, p. 743; am. 2003, ch. 299, § 6, p. 814; am. 2003, ch. 375, § 6, p. 1002; am. 2006, ch. 244, § 6, p. 740.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 33-1004G was repealed by S.L. 2011, ch. 96, effective March 17, 2011. The repeal by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 repeal became null and void, and this section was returned to its pre-2011 provisions. This section was then repealed by S.L. 2013, ch. 97, § 1.

**33-1004H. Employing retired teachers and administrators.** — (1) Notwithstanding the provisions of section 33-514, 33-1271 or 33-1273, Idaho Code, school districts may employ school resource officers, certificated schoolteachers, and administrators who are receiving retirement benefits from the public employee retirement system of Idaho, except those who received benefits under the early retirement program previously provided by the state in positions requiring such certification, as at-will employees. Any employment contract between the retiree and the school district shall be separate and apart from the collective bargaining agreement of the school district.

(2) Retirees employed under this section shall accrue one (1) day per month of sick leave, with no annual sick leave accumulation unless additional sick leave is negotiated between the candidate and the school district at the time of employment. No sick leave accrued under this section qualifies for unused sick leave benefits under [section 33-1228, Idaho Code](#).

(3) School districts are not required to provide health insurance or life insurance benefits to persons employed under this section. Post-termination benefits may be negotiated between the school district and the certificated employee at the time of rehiring but in no event can the parties affect or attempt to affect the provisions governing the public employee retirement system.

### **History.**

[I.C., § 33-1004H](#), as added by 2007, ch. 131, § 1, p. 387; am. 2013, ch. 97, § 2, p. 235; am. 2019, ch. 202, § 2, p. 620.

## **STATUTORY NOTES**

### **Cross References.**

Public employee retirement system, § 59-1301 et seq.

### **Amendments.**

The 2013 amendment, by ch. 97, substituted “previously provided by the state” for “provided in [section 33-1004C, Idaho Code](#)” in the first sentence

in subsection (1).

The 2019 amendment, by ch. 202, inserted “school resource officers” in the first sentence in subsection (1).

**Compiler’s Notes.**

Section 3 of S.L. 2007, ch. 131 provided “The provisions of Section (1) of this act shall be null, void and of no force and effect on and after July 1, 2012.” Section 3 of S.L. 2007, ch. 131 was repealed by S.L. 2012, ch. 169, § 1, effective July 1, 2012.

This section was amended by S.L. 2011, ch. 96, effective March 17, 2011. The amendment by S.L. 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

**Effective Dates.**

Section 3 of S.L. 2013, ch. 97 declared an emergency. Approved March 21, 2013.



**33-1004I. Master educator premiums. [Effective until July 1, 2024 — See subsection (8)].** — (1) A portion of the moneys available to the education support program shall be distributed per full-time equivalent instructional staff position employed by each school district. Such moneys shall be paid to instructional staff employees who have been awarded a master educator premium prior to June 30, 2021, and have earned a master educator designation by meeting the minimum qualifications set forth in subsection (2) of this section and the additional qualifications developed or adopted by the employing school district pursuant to subsection (3) of this section, in an amount set forth in subsection (4) of this section. No new applications shall be accepted for any year after January 1, 2021.

(2) The minimum qualifications for an instructional staff or a pupil service staff employee to earn a master educator designation shall be as follows:

(a) An instructional staff or pupil service staff employee must have eight (8) or more years of teaching experience provided that the three (3) years immediately preceding the award must be continuous and in Idaho. The remainder of the teaching experience making up the eight (8) years must have been earned in Idaho or in a compact-member state pursuant to [section 33-4101, Idaho Code](#);

(b) An instructional staff or pupil service staff employee must demonstrate mastery of instructional techniques for no fewer than three (3) of the previous five (5) years of instruction through:

(i) Artifacts demonstrating evidence of effective teaching; and

(ii) Successful completion of an annual individualized professional learning plan; and

(c) A majority of an instructional staff employee's students must meet measurable student achievement as defined in [section 33-1001, Idaho Code](#), for no fewer than three (3) of the previous five (5) years.

(d) A majority of a pupil service staff employee's students must meet measurable student achievement or measurable student success

indicators, as defined in [section 33-1001, Idaho Code](#), for no fewer than three (3) of the previous five (5) years.

(3) In addition to the minimum qualifications for a master educator designation set forth in subsection (2) of this section:

(a) Local school districts may develop and require additional qualifications showing demonstrated mastery of instructional techniques and professional practice through multiple measures, provided that such qualifications shall be developed by a committee consisting of teachers, administrators and other school district stakeholders and shall first be approved by the state board of education;

(b) Local school districts may develop plans that recognize groups of teachers based on measurable student achievement goals aligned with school district-approved continuous improvement plans. Groups may be school-wide or may be smaller groups such as grade levels or by subject matter. Each teacher in a master educator group shall receive a master educator premium if goals are met according to the district plans. Plans shall be developed by a committee consisting of teachers, administrators and other school district stakeholders and shall first be approved by the state board of education. Any school district that does not follow their preapproved plan shall not receive future master educator premium dollars; or

(c) If a local school district has not developed qualifications pursuant to paragraph (a) or (b) of this subsection, then eligible school district staff may apply to the state board of education by showing demonstrated mastery of instructional techniques and professional practice through multiple measures as developed by a committee facilitated by the state board of education consisting of teachers, administrators and other stakeholders, which measures shall be approved by the state board of education.

(4) The amount of the master educator premium paid to a qualified instructional staff or pupil service staff employee shall be four thousand dollars (\$4,000) each year for three (3) years starting with the initial award of the master educator premium.

(5) Local school district boards of trustees may provide master educator premiums to instructional staff employees consistent with the provisions of this section.

(6) For the purposes of this section, the term “school district” also means “public charter school” and the term “board of trustees” also means “board of directors.”

(7) The state board of education may promulgate rules implementing the provisions of this section.

(8) The provisions of this section shall be null, void, and of no force and effect on and after July 1, 2024.

### **History.**

**I.C., § 33-1004I**, as added by 2015, ch. 229, § 10, p. 701; am. 2017, ch. 92, § 1, p. 239; am. 2020, ch. 272, § 4, p. 795.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-1004I, Pay for performance — Hard to fill positions — Leadership awards, which comprised **I.C., § 33-1004I**, as added by 2011, ch. 97, § 1, p. 229; am. 2011, ch. 296, § 1, p. 831; am. 2012, ch. 70, § 1, p. 201; am. 2012, ch. 267, § 2, p. 744, became null and void, pursuant to rejection of Proposition 2 on November 6, 2012.

### **Amendments.**

The 2017 amendment, by ch. 92, substituted “master educator” for “master teacher” in the section heading and throughout the section, and inserted “or pupil service staff” following “instructional staff” throughout the section; in paragraph (2)(a), added “and in Idaho” in the first sentence and added the second sentence; substituted “must meet” for “meet” in paragraph (2)(c); and added (2)(d); and in paragraph (3)(c), substituted “eligible school staff may apply to the state board of education by” for “the school district shall adopt and require additional qualifications.”

The 2020 amendment, by ch. 272, in subsection (1), inserted “been awarded a master educator premium prior to June 30, 2021, and have” near

the middle of the second sentence and added the last sentence; in subsection (4), inserted “or pupil service staff” near the beginning and deleted the former last two sentences, which read: “After the third year of receiving the master educator premium, the instructional staff employee must continue to demonstrate that he or she meets the master educator premium qualifications in each subsequent year. If the qualifications are not met, then the premium will be discontinued until such time as the qualifications are met”; and added subsection (8)

**Effective Dates.**

Section 15 of S.L. 2015, ch. 229 provided that the enactment of this section should take effect on and after July 1, 2019.

Section 3 of S.L. 2017, ch. 92 provided that the amendment of this section should take effect on and after July 1, 2019.

**33-1004J. Leadership premiums.** — (1) Of the moneys available to the educational support program, eight hundred fifty dollars (\$850) shall be distributed per full-time equivalent instructional and pupil service staff position employed by each school district. Such moneys shall be paid to instructional and pupil service staff employees for leadership activities as provided in paragraphs (a) through (h) of this subsection. Such premiums shall be valid only for the fiscal year for which the premiums are made and shall be made for one (1) or more of the following reasons identified as leadership priorities by a committee consisting of teachers, administrators and other school district stakeholders and shall be approved by the board of trustees:

- (a) Teaching a course in which students earn both high school and college credit;
- (b) Teaching a course to middle school students in which the students earn both middle school and high school credit;
- (c) Holding and providing service in multiple nonadministrative certificate or subject endorsement areas;
- (d) Serving or being hired to serve in an instructional or pupil service position designated as hard to fill by the board of trustees;
- (e) Serving or being hired to serve in a hard to fill instructional position in a career technical education program;
- (f) Providing mentoring, peer assistance or professional development pursuant to [section 33-512\(17\), Idaho Code](#);
- (g) Having received professional development in career and academic counseling, and then providing career or academic counseling for students, with such services incorporated within or provided in addition to the teacher's regular classroom instructional or pupil service duties;
- (h) Other leadership duties designated by the board of trustees, exclusive of duties related to student activities or athletics. Such duties shall require that the employee work additional time as a condition of the receipt of a leadership premium.

(2) Local school district boards of trustees shall provide leadership premiums to instructional or pupil service staff employees consistent with the provisions of this section and may not distribute moneys provided pursuant to this section unless employees meet one (1) of the criteria specified in subsection (1) of this section. The decision as to whom and how many receive leadership premiums, and in what amounts, shall not be subject to collective bargaining, any other provision of law notwithstanding. A board may provide multiple leadership premiums to an instructional or pupil service staff employee. However, no such employee shall receive cumulative leadership premiums in excess of twenty-five percent (25%) of the minimum salary as designated on the career ladder pursuant to [section 33-1004B, Idaho Code](#), nor less than nine hundred dollars (\$900), regardless of such employees full-or part-time status.

(3) The state department of education may require reports of information as needed to implement the provisions of this section. At a minimum, school districts shall report the information necessary for the department to fulfill the provisions of this section. The department shall report, on or before January 15 each year, to the governor, the senate education committee and the house of representatives education committee relevant information regarding leadership premiums, including the following:

- (a) The number of instructional and pupil service staff employees in the district;
- (b) The number of instructional and pupil service staff employees that received a leadership premium;
- (c) The number of leadership premiums issued, by district;
- (d) The average dollar amount of leadership premiums issued, by district;
- (e) The highest and lowest leadership premium issued, by district;
- (f) The percent of instructional and pupil service staff positions receiving leadership premiums and the cumulative amount of such premiums, by district; and
- (g) The reasons identified as leadership priorities approved by the board of trustees as listed in subsection (1) of this section, including a description of the other leadership duties designated by the board of trustees as provided in subsection (1)(h) of this section and the number of

the premiums awarded per leadership activity as identified in subsection (1)(a) through (h) of this section.

(4) For the purposes of this section, the term “school district” also means “public charter school,” and the term “board of trustees” also means “board of directors.”

(5) The state board of education is hereby authorized to promulgate rules to implement the provisions of this section.

### **History.**

**I.C., § 33-1004J**, as added by 2014, ch. 83, § 5, p. 228; am. 2015, ch. 229, § 11, p. 701; am. 2016, ch. 350, § 1, p. 1027.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-1004J, Differential pay, which comprised **I.C., § 33-1004J**, as added by 2013, ch. 338, § 5, p. 877, was repealed by S.L. 2014, ch. 338, § 7, effective July 1, 2014.

### **Amendments.**

The 2015 amendment, by ch. 229, in subsection (1), in the introductory paragraph, inserted “and pupil service” in the first and second sentences, substituted “paragraphs (a) through (g)” for “paragraphs (a) through (h)” in the second sentence, and added “a committee consisting of teachers, administrators and other school district stakeholders and shall be approved by” near the end of the last sentence, deleted former paragraph (a), which read: “Providing instruction in a subject in which the employee holds a content area master’s degree”, and redesignated the remaining paragraphs accordingly; inserted “or pupil service” in paragraphs (1)(d), (1)(f), in the first and third sentences in subsection (2), and in paragraph (3)(d); and added paragraph (3)(e).

The 2016 amendment, by ch. 350, in subsection (1), inserted “or being hired to serve” near the beginning of paragraph (d), and added paragraph (e), and redesignated former paragraphs (e) and (g) as paragraphs (g) and (h); in subsection (2), rewrote the first sentence, which formerly read: “Local school district boards of trustees may provide leadership premiums

to instructional or pupil service staff employees consistent with the provisions of this section” and rewrote the last sentence, which formerly read: “However, no such employee shall receive cumulative leadership premiums in excess of twenty-five percent (25%) of the base salary amount designated in [section 33-1004E, Idaho Code](#), nor less than eight hundred fifty dollars (\$850)”; and, in subsection (3), in the introductory paragraph, added the second sentence and substituted “The department shall report, on or before January 15 each year” for “The department shall report, on or before January 15, 2016, and on or before January 15 of each subsequent year” at the beginning of the last sentence, added paragraphs (a) and (b), redesignated the subsequent paragraphs accordingly, and rewrote former paragraph (g), which formerly read: “The reasons identified as leadership priorities approved by the board of trustees as listed in subsection (1) of this section.”

### **Legislative Intent.**

Section 1 of S.L. 2014, ch. 83 provides: “Legislative Intent. It is the intent of the Legislature to support and implement the recommendation of the 2013 Task Force for Improving Education regarding leadership awards and the career ladder compensation model (Task Force Summary Recommendation 12 and Fiscal Stability/Effective Teachers and Leaders Subcommittee Recommendation 1.2).”



**33-1005. Districts receiving federal funds.** — In school districts which receive moneys for the maintenance and operation of the schools from agencies of the federal government, the educational support program shall be computed on the basis of the average daily attendance of pupils as set forth in this chapter and without regard to the manner in which such allowance from the federal government may be computed.

**History.**

1963, ch. 13, § 127, p. 27; am. 1963, ch. 322, § 5, p. 919; am. 1980, ch. 179, § 6, p. 382.

**33-1006. Transportation support program.** — (1) The state board of education shall determine what costs of transporting pupils, including maintenance, operation and depreciation of basic vehicles, insurance, payments under contract with other public transportation providers whose vehicles used to transport pupils comply with federal transit administration regulations, “bus testing,” 49 CFR part 665, and any revision thereto, as provided in subsection (4)(d) of this section, or other state department of education-approved private transportation providers, salaries of drivers, and any other costs, shall be allowable in computing the transportation support program of school districts.

(2) Any costs associated with the addition of vehicle features that are not part of the basic vehicle shall not be allowable in computing the transportation support program of school districts. A basic vehicle is hereby defined as the cost of the vehicle without optional features, plus the addition of essential safety features and features necessary for the transportation of pupils with disabilities.

(3) Each school district shall maintain records and make reports as are required for the purposes of this section.

(4) The transportation support program of a school district shall be based upon the allowable costs of:

(a) Transporting public school pupils one and one-half (1 ½) miles or more to school;

(b) Transporting pupils less than one and one-half (1 ½) miles as provided in [section 33-1501, Idaho Code](#), when approved by the state board of education;

(c) Payments when transportation is not furnished, as provided in [section 33-1503, Idaho Code](#);

(d) The transportation program for grades 6-12, upon the costs of payments pursuant to a contract with other public or private transportation providers entered into as provided in [section 33-1510, Idaho Code](#), if the school district establishes that the reimbursable costs

of transportation under the contract are equal to or less than the costs for school buses;

(e) The employer's share of contributions to the public employee retirement system and to social security; and

(f) Providing transportation to and from approved school activities as may be approved by the rules of the state board of education.

(5) The state's share of the transportation support program shall be fifty percent (50%) of reimbursable transportation costs of the district incurred during the immediately preceding state fiscal year, except for the cost of state department of education training and fee assessments and bus depreciation and maintenance, for which the state's share shall be eighty-five percent (85%) of such costs. For school districts that contract for pupil transportation services, the state's share shall be the average state share of costs for district-run operations, based on the statewide total of such costs. Provided however, that the reimbursable costs for any school district shall not exceed one hundred three percent (103%) of the statewide average reimbursable cost per mile or the state average reimbursable cost per student rider, whichever is more advantageous to the school district. If a school district's costs exceed the one hundred three percent (103%) limit when computed by the more advantageous of the two (2) methods, that school district shall be reimbursed at the appropriate percentage designated by this subsection, multiplied by the maximum limit for whichever method is more favorable to the school district. A school district may appeal the application of the one hundred three percent (103%) limit on reimbursable costs to the state board of education, which may establish for that district a new percentile limit for reimbursable costs compared to the statewide average, which is higher than one hundred three percent (103%). In doing so, the state board of education may set a new limit that is greater than one hundred three percent (103%), but is less than the percentile limit requested by the school district. However, the percentage increase in the one hundred three percent (103%) cap shall not exceed the percentage of the district's bus runs that qualify as a hardship bus run, pursuant to this subsection. Any costs above the new level established by the state board of education shall not be reimbursed. Such a change shall only be granted by the state board of education for hardship bus runs. To qualify as a hardship bus run, such bus run shall meet at least two (2) of the following criteria:

- (a) The number of student riders per mile is less than fifty percent (50%) of the statewide average number of student riders per mile;
- (b) Less than a majority of the miles on the bus run are by paved surface, concrete or asphalt road;
- (c) Over ten percent (10%) of the miles driven on the bus run are a five percent (5%) slope or greater.

(6) Beginning on July 1, 2005, any eligible home-based public virtual school may claim transportation reimbursement for the prior fiscal year's cost of providing educational services to students. In order to be eligible, such a school shall have at least one (1) average daily attendance divisor, pursuant to [section 33-1002, Idaho Code](#), that is greater than the median divisor shown for any category of pupils, among the actual divisors listed. For the purposes of paragraphs (a), (b) and (c) of this subsection (6), "education provider" means the home-based public virtual school or an entity that has legally contracted with the home-based public virtual school to supply education services. Reimbursable costs shall be limited to the costs of:

- (a) Providing an internet connection service between the student and the education provider, not including the cost of telephone service;
- (b) Providing electronic and computer equipment used by the student to transmit educational material between the student and the education provider;
- (c) Providing a toll-free telephone service for students to communicate with the education provider;
- (d) Providing education-related, face-to-face visits by representatives of the home-based public virtual school, with such reimbursements limited to the mileage costs set for state employee travel by the state board of examiners; and
- (e) Any actual pupil transportation costs that would be reimbursable if claimed by a school district.

The total reimbursement for such home-based public virtual schools shall be exempt from the statewide average cost per mile limitations of this section. The state's share of reimbursable costs shall be eighty-five percent

(85%), subject to the statewide cost per student rider provisions of this section. For the purposes of such home-based public virtual school, the number of student riders shall be the same as the number of pupils in average daily attendance.

(7) The state department of education shall calculate the amount of state funds lost in fiscal year 2010 by each school district as a result of the decrease in the state reimbursement from eighty-five percent (85%) to fifty percent (50%) of certain eligible costs, including the reduction calculated for districts that contract for pupil transportation services, and excluding any reductions made due to the limitation on reimbursable expenses, all pursuant to subsection (5) of this section. The amount so calculated shall be distributed to each school district in fiscal year 2010. For each fiscal year thereafter, the amount distributed pursuant to this subsection (7) for each school district shall be determined as follows:

- (a) Divide the amount distributed to the district pursuant to this subsection (7) in fiscal year 2010 by the district's support units for fiscal year 2010;
- (b) Multiply the result of the calculation found in subsection (7)(a) of this section by the number of support units in the current fiscal year;
- (c) Determine the percentage change in statewide transportation reimbursements as provided for in subsection (5) of this section since fiscal year 2010;
- (d) Determine the percentage change in statewide student enrollment since fiscal year 2010;
- (e) Subtract the result of the calculation found in subsection (7)(d) of this section from the result of the calculation found in subsection (7)(c) of this section;
- (f) Adjust the result of the calculation found in subsection (7)(b) of this section by the percentage result from subsection (7)(e) of this section.

For school districts divided after fiscal year 2010, the calculation in subsection (7)(a) of this section shall still be based on the fiscal year 2010 figures for the formerly consolidated district. For public charter schools beginning operations on or after July 1, 2009, all calculations in this subsection (7) that are based on fiscal year 2010 shall instead be based on

the public charter school's first fiscal year of operations. For the purposes of this subsection (7), the support units used shall be the number used for calculating salary-based apportionment. Funds distributed pursuant to this subsection (7) shall be used to defray the cost of pupil transportation. If the amount distributed is in excess of a school district's actual pupil transportation costs, less any state reimbursements provided by subsection (5) of this section, the excess funds may be used at the school district's discretion.

(8) The total moneys paid to school districts and public charter schools for eligible transportation costs shall be reduced by a proportionate amount to equal seven million five hundred thousand dollars (\$7,500,000) and shall be used as discretionary spending.

### **History.**

1963, ch. 13, § 130, p. 27; am. 1969, ch. 198, § 1, p. 582; am. 1974, ch. 207, § 1, p. 1536; am. 1979, ch. 254, § 8, p. 661; am. 1980, ch. 179, § 7, p. 382; am. 1994, ch. 428, § 11, p. 1368; am. 1997, ch. 281, § 1, p. 852; am. 2003, ch. 372, § 11, p. 986; am. 2004, ch. 370, § 1, p. 1094; am. 2007, ch. 352, § 10, p. 1039; am. 2009, ch. 284, § 1, p. 852; am. 2010, ch. 234, § 33, p. 531; am. 2012, ch. 52, § 1, p. 148; am. 2013, ch. 168, § 1, p. 386; am. 2017, ch. 117, § 1, p. 268.

## **STATUTORY NOTES**

### **Cross References.**

Charge for audits by legislative services office, § 67-450A.

Mileage allowance set by board of examiners, § 67-2008.

Public education stabilization fund, § 33-907.

Public employee retirement system, § 59-1301 et seq.

### **Amendments.**

The 2007 amendment, by ch. 352, in the introductory paragraph in subsection (5), added the fifth and last sentences, rewrote the seventh sentence, which formerly read: "Such a change shall only be granted by the state board of education if the application can be justified based on uniquely

difficult geographic circumstances, or extraordinary one (1) time circumstances outside the district's foresight and control," and deleted the former eighth and ninth sentences, which read: "An application granted based on extraordinary one (1) time circumstances shall be effective for one (1) year only. An application based on uniquely difficult geographic circumstances shall be reviewed by the state board of education for continued validity at least every five (5) years"; and added subsections (5) (a) through (5)(c).

The 2009 amendment, by ch. 284, added the last sentence in subsection (1); in the introductory paragraph in subsection (5), substituted "fifty percent (50%)" for "eighty-five percent (85%)" and added the exception in the first sentence, added the second sentence, in the third sentence, substituted "Provided however, that the reimbursable costs for any school district shall not exceed" for "Provided the reimbursable costs do not exceed" in the third sentence, substituted "reimbursed at the appropriate percentage designated by this subsection, multiplied by the maximum limit" for "reimbursed at eighty-five percent (85%) of the maximum limit" in the fourth sentence, and, in the last sentence, deleted "display uniquely difficult geographic circumstances and" following "such bus run shall"; deleted subsection (6), which pertained to loans granted to school districts; redesignated former subsection (7) as subsection (6); and added present subsection (7).

The 2010 amendment, by ch. 234, in subsection (1), deleted "or for approved school activities as provided in subsection (4) of this section" from the end; and deleted paragraph (4)(e), which formerly read: "The costs of providing transportation to and from approved school activities as may be approved by rules of the state board of education" and redesignated former paragraph (4)(f) as (4)(e).

The 2012 amendment, by ch. 52, deleted the former last paragraph of subsection (5), which read: "The legislative audits section of the legislative services office shall review cap increases granted by the state board of education pursuant to this section, and shall include findings in the board's regular audit report for any instances in which such increases failed to meet the standards set forth in this subsection."

The 2013 amendment, by ch. 168, added subsection (8)

The 2017 amendment, by ch. 117, deleted the former last sentence in subsection (1), which read: “Provided however, that the only miles for which costs may be reimbursed shall be those directly associated with transporting students for the purposes of regular school attendance during regular days and hours”; substituted “Payments” for “The cost of payments” at the beginning of paragraph (4)(c); and added paragraph (4)(e).

### **Legislative Intent.**

Section 15 of S.L. 2010, ch. 234 provided “It is legislative intent that public school employee benefits paid by the state, pursuant to [Section 33-1004F, Idaho Code](#), be paid for all eligible employees that a school district or charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff.”

Section 25 of S.L. 2010, ch. 234 provided “It is legislative intent that school districts continuing to use discretionary funds for safe and drug-free purposes may include the following:

“(1) Prevention programs, student assistance programs that address early identification and referral, and aftercare.

“(2) An advisory board to assist each district in making decisions relating to their program.”

### **Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required



by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

Section 4 of S.L. 2004, ch. 370 declared an emergency. Approved April 1, 2004.

Section 2 of S.L. 2012, ch. 52, declared an emergency. Approved March 12, 2012.

**33-1006A. Pupil transportation audits. [Repealed.]**

Repealed by S.L. 2015, ch. 81, § 1, effective July 1, 2015.

**History.**

I.C., § 33-1006A, as added by 2009, ch. 284, § 2, p. 852.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 33-1006A was amended and redesignated as § 33-1007 by S.L. 1980, ch. 179, § 8.

**33-1007. Exceptional education program report.** — The state department of education shall report annually to the legislature the status of the exceptional education support program. The report shall include, but not be limited to, data concerning the number of students with disabilities and gifted students served, the districts which operate programs and the nature of the program, the money distributed pursuant to the provisions of the exceptional education support program, and estimated number of students with disabilities and gifted students, requiring but not receiving services. The report shall be filed not later than the fifteenth day of the legislative session and may include recommendations of the board relating to administrations of the program.

**History.**

I.C., § 33-1006A, as added by 1974, ch. 127, § 7, p. 1305; am. and redesign. 1980, ch. 179, § 8, p. 382; am. 1985, ch. 107, § 7, p. 191; am. 1994, ch. 428, § 12, p. 1368; am. 2010, ch. 235, § 14, p. 542.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-1007, which comprised S.L. 1963, ch. 13, § 131, p. 27, was repealed by S.L. 1980, ch. 179, § 1.

**Amendments.**

The 2010 amendment, by ch. 235, in the second sentence, substituted “number of students with disabilities and gifted students served” for “number of persons served, both handicapped and gifted” and “estimated number of students with disabilities and gifted students” for “estimated number of persons, both handicapped and gifted.”

**Compiler’s Notes.**

This section was formerly compiled as § 33-1006A.

**Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

**33-1007A. Feasibility study and plan for school closures and/or school district consolidation.** — (1) The state superintendent of public instruction shall determine the reimbursable costs to any school district which are incurred under the provisions of section 33-310B, Idaho Code. The school district shall be entitled to reimbursement of all allowable costs pursuant to rules and regulations promulgated by the state board of education.

(2) In school districts where the implementation of a school closure plan requires the consolidation of one or more schools, the support program allowance for the consolidated school for a seven (7) year period following school consolidation, shall not be less than the combined support program allowance of the component schools in the last year of operation.

**History.**

I.C., § 33-1007A, as added by 1989, ch. 296, § 4, p. 724.

**STATUTORY NOTES**

**Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

**Prior Laws.**

Former § 33-1007A, which comprised I.C., § 1007A, as added by 1965, ch. 231, § 1, p. 551, was repealed by S.L. 1967, ch. 98, § 1, p. 208.

**Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual

school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

**33-1008. Support program — Elementary district reclassified. —**

Should any elementary school district which has met the qualifications required by law for reclassification as a secondary school district propose to be so reclassified and begin the establishment and maintenance of a secondary school, that district shall be allowed a support program for the secondary school during the first year of its operation, computed as follows:

1. The educational support program shall be reported in the annual report preceding the beginning of operation of the secondary school, as the aggregate of the products of the number of resident pupils of the district who attended secondary schools of other districts during the preceding year, multiplied by the per-pupil state and county apportionments for the educational support program to the other districts as shown on the last approved tuition certificate of the other districts, for secondary school pupils.

2. The transportation support program shall be reported in the annual report preceding the beginning of operation of the secondary school, as the aggregate of the products of the number of pupils proposed to be transported to the new secondary school who attended secondary schools in other districts during the preceding year, multiplied by the per-pupil state and county apportionments for the transportation support program to each of the other districts for secondary school pupils as shown on the last approved tuition certificate issued to the other district.

**History.**

1963, ch. 13, § 132, p. 27; am. 1980, ch. 179, § 9, p. 382.

**33-1008A. Apportionments for increased average daily attendance.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1970, ch. 180, § 1, p. 527; am. 1971, ch. 280, § 1, p. 1094, was repealed by S. L. 1972, ch. 352, § 4.



### **33-1009. Payments from the public school income fund. —**

1.a. Payments of the state general account appropriation for public school support shall be made each year by the state department of education to the public school districts of the state in four (4) payments. Payments to the districts shall be made not later than the fifteenth day of August, the fifteenth day of November, the fifteenth day of February, and the fifteenth day of May each year. The first payment by the state department of education shall be approximately fifty percent (50%) of the total general account appropriation for the fiscal year, while the second and third payments shall be approximately twenty percent (20%) each, and the fourth payment approximately ten percent (10%) respectively, except as provided for in [section 33-5209C, Idaho Code](#). Amounts apportioned due to a special transfer to the public school income fund to restore or reduce a deficiency in the prior year's transfer pursuant to subsection 4. of this section shall not be subject to this limitation.

b. Payments of moneys, other than the state general account appropriation, that accrue to the public school income fund shall be made by the state department of education to the school districts of the state on the fifteenth day of November, February, May and July each year. The total amount of such payments shall be determined by the state department of education and shall not exceed the amount of moneys available and on deposit in the public school income fund at the time such payment is made.

c. Amounts apportioned due to a special transfer to the public school income fund to restore or reduce a deficiency in the prior year's transfer pursuant to subsection 4. of this section shall not be subject to the limitation imposed by paragraphs a. and b. of this subsection.

2. Payments made to the school districts in August and November are advance payments for the current year and may be based upon payments from the public school income fund for the preceding school year. Each school district may receive its proportionate share of the advance payments in the same ratio that its total payment for the preceding year was to the total payments to all school districts for the preceding year.

3. No later than the fifteenth day of February in each year, the state department of education shall compute the state distribution factor based on the total average daily attendance through the first Friday in November. The factor will be used in payments of state funds in February and May. Attendance shall be reported in a format and at a time specified by the state department of education.

As of the thirtieth day of June of each year the state department of education shall determine final payments to be made on July fifteenth next succeeding to the several school districts from the public school income fund for the school year ended June 30. The July payments shall take into consideration:

- a. The average daily attendance of the several school districts for the twenty-eight (28) best weeks of the school year completed not later than the thirtieth of June;
- b. All funds available in the public school income fund for the fiscal year ending on the thirtieth of June;
- c. All payments distributed for the current fiscal year to the several school districts;
- d. The adjustment based on the actual amount of discretionary funds per support unit required by the provisions of [section 33-1018, Idaho Code](#);
- e. Payments made or due for the transportation support program and the exceptional education support program. The state department of education shall apportion and direct the payment to the several school districts the moneys in the public school income fund in each year, taking into account the advance made under subsection 2. of this section, in such amounts as will provide in full for each district its support program, and not more than therefor required, and no school district shall receive less than fifty dollars (\$50.00).

4. If the full amount appropriated to the public school income fund from the general account by the legislature is not transferred to the public school income fund by the end of the fiscal year, the deficiency resulting therefrom shall either be restored or reduced through a special transfer from the general account in the first sixty (60) days of the following fiscal year, or shall be calculated in computing district levies, and any additional levy

shall be certified by the state superintendent of public instruction to the board of county commissioners and added to the district's maintenance and operation levy. If the deficiency is restored or reduced by special transfer, the amount so transferred shall be in addition to the amount appropriated to be transferred in such following fiscal year and shall be apportioned to each school district in the same amount as each would have received had the transfer been made in the year the deficiency occurred. The state department of education shall distribute to the school district the full amount of the special transfer as soon as practical after such transfer is made. In making the levy computations required by this subsection the state department of education shall take into account and consider the full amount of money receipted into the public school income fund from all sources for the given fiscal year. Deficits in the transfer of the appropriated amount of general account revenue to the public school income fund shall be reduced by the amount, if any, that the total amount receipted from other sources into the public school income fund exceeds the official estimated amount from those sources. The official estimate of receipts from other sources shall be the total amount stated by the legislature in the appropriation bill. The provisions of this subsection shall not apply to any transfers to or from the public education stabilization fund.

5. Any apportionments in any year, made to any school district, which may within the succeeding three (3) year period be found to have been in error either of computation or transmittal, may be corrected during the three (3) year period by reduction of apportionments to any school district to which over-apportionments may have been made or received, and corresponding additions to apportionments to any school district to which under-apportionments may have been made or received.

### **History.**

1963, ch. 13, § 133, p. 27; am. 1963, ch. 322, § 9, p. 919; am. 1967, ch. 243, § 1, p. 707; am. 1969, ch. 144, § 1, p. 466; am. 1972, ch. 352, § 5, p. 1040; am. 1979, ch. 254, § 9, p. 661; am. 1980, ch. 179, § 10, p. 382; am. 1981, ch. 185, § 1, p. 329; am. 1983, ch. 4, § 10, p. 6; am. 1983, ch. 147, § 1, p. 398; am. 1984, ch. 180, § 2, p. 426; am. 1985, ch. 107, § 8, p. 191; am. 1996, ch. 322, § 26, p. 1029; am. 1997, ch. 90, § 1, p. 215; am. 2003, ch. 372, § 12, p. 986; am. 2007, ch. 350, § 6, p. 1028; am. 2012, ch. 340, § 3, p. 945; am. 2013, ch. 343, § 1, p. 908; am. 2014, ch. 273, § 1, p. 681.

## STATUTORY NOTES

### Cross References.

General fund, § 67-1205 et seq.

Public education stabilization fund, § 33-907.

Public school income fund, § 33-903.

State superintendent of public instruction, § 67-1501 et eq.

### Amendments.

The 2007 amendment, by ch. 350, in the third sentence in subsection 1.a., substituted “The first two payments” for “Each payment” and “thirty percent” for “twenty percent,” and added “while the third, fourth and fifth payments shall be approximately twenty percent (20%), ten percent (10%) and ten percent (10%), respectively.”

The 2012 amendment, by ch. 340, in subsection 2, substituted “may be based” for “will be based” in the first sentence and substituted “may receive” for “shall receive” in the second sentence.

The 2013 amendment, by ch. 343, inserted “except as provided for in [section 33-5209C, Idaho Code](#)” at the end of the third sentence in paragraph 1.a.

The 2014 amendment, by ch. 273, in subsection 1., substituted “department of education” for “board of education” throughout, substituted “four payments” for “five payments” in the first sentence, deleted “the first day of October” following “August” in the second sentence, and rewrote the third sentence, which formerly read: “The first two (2) payments by the state board of education shall be approximately thirty percent (30%) of the total general account appropriation for the fiscal year, while the third, fourth and fifth payments shall be approximately twenty percent (20%), ten percent (10%) and ten percent (10%), respectively, except as provided for in [section 33-5209C, Idaho Code](#)”; and deleted “October” following “August” in the first sentence of subsection 2.

### Legislative Intent.

Section 4 of S.L. 2007, ch. 350 provided “It is the legislative intent that public school employee benefits paid by the state, pursuant to [Section 33-1004F, Idaho Code](#), be paid for all eligible employees that a school district or public charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff.”

### **Compiler’s Notes.**

S.L. 2012, chapter 340 became law without the signature of the governor.

### **Effective Dates.**

Section 17 of S.L. 1983, ch. 4 read: “(1) An emergency existing therefor, which emergency is hereby declared to exist, Sections 3 and 4 of this act shall be in full force and effect on and after passage and approval, and retroactively to July 1, 1982.

“(2) An emergency existing therefor, which emergency is hereby declared to exist, Section 12 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1983.

“(3) An emergency existing therefor, which emergency is hereby declared to exist, Sections 2, 5, 6, 7, 8, 9, 10 and 16 of this act shall be in full force and effect on and after passage and approval.

“(4) An emergency existing therefor, which emergency is hereby declared to exist, Sections 13, 14 and 15 of this act shall be in full force and effect on and after March 1, 1983.

“(5) Section 11 of this act shall be in full force and effect on and after July 1, 1983.” Approved February 18, 1983.

Section 2 of S.L. 1983, ch. 147 declared an emergency. Approved April 6, 1983.

Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

## JUDICIAL DECISIONS

### Analysis

Ad valorem property tax.

Limit of taxing power.

#### **Ad Valorem Property Tax.**

The state's system of public school financing, in which per pupil expenditures varied among the school districts as a result of variations in the districts' assessed valuations for purposes of an ad valorem property tax, did not deny equal protection of the law to nor discriminate against students in less affluent school districts with low expenditures. *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

#### **Limit of Taxing Power.**

Subsection 7 (now subsection 4) does not authorize a board of county commissioners to levy taxes for the county school fund beyond the amounts certified to it by the state board of education in order to make up a deficit in the county school fund for the preceding year. *Board of Trustees v. Board of County Comm'rs*, 88 Idaho 250, 398 P.2d 442 (1965).

**33-1009A. Decrease in weighted average daily attendance. [Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-1009A which comprised S.L. 1970, ch. 137, § 1, p. 332, was repealed by S.L. 1972, ch. 352, § 6.

**Compiler's Notes.**

This section, which comprised I.C., § 33-1009A, as added by 1972, ch. 374, § 1, p. 1095; am. 1976, ch. 152, § 1, p. 546; am. 1978, ch. 64, § 1, p. 130, was repealed by S.L. 1980, ch. 179, § 1.

**33-1010. Apportionments when mines net profits considered.** — In any school district in which mines net profits are made a part of the total assessed value of taxable property, should the amount of such net profits certified as required by section 63-2803, Idaho Code, be lower in any year than for the immediately preceding year in an amount equaling five per cent (5%) or more of the total assessed value of taxable property of the district for the preceding year, then the state department of education shall compute the adjusted value of taxable property in the district for the purposes of section 33-1009, Idaho Code, by subtracting from the adjusted value of property in the district for the preceding year, the total of such decrease in mines net profits tax.

The county auditor of each county in which the net profits of mines are made a part of the total assessed value of taxable property of any school district, shall annually examine the reports of mines net profits certified to the county assessor as required by [section 63-2803, Idaho Code](#), and shall certify to the state department of education not later than the fifteenth day of June of each year, the net profits of mines creditable to each school district in said county.

**History.**

1963, ch. 13, § 134, p. 27; am. 1985, ch. 107, § 9, p. 191.



**33-1011. Taxes to be levied by county commissioners — Determination and certification.** — Not later than the second Monday in September of each year the state superintendent of public instruction shall determine and certify to the board of county commissioners the amounts of money as shall be required under the provisions of this chapter.

**History.**

1963, ch. 13, § 135, p. 127; am. 1979, ch. 254, § 10, p. 661; am. 1985, ch. 107, § 10, p. 191.

**STATUTORY NOTES**

**Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

**JUDICIAL DECISIONS**

**Limit of Taxing Power.**

Subsection 7 (now subsection 4) of § 33-1009 does not authorize a board of county commissioners to levy taxes for the county school fund beyond the amounts certified to it by the state board of education [now superintendent of public instruction] in order to make up a deficit in the county school fund for the preceding year. *Board of Trustees v. Board of County Comm'rs*, 88 Idaho 250, 398 P.2d 442 (1965).

**Cited in:** *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

**33-1012. Transmittal of county school moneys.** — Not later than the 10th day of each month, beginning August 1, 1981, the county auditor shall compute the moneys in the county school fund and shall transmit not later than that date the amount determined to the treasurer of the state of Idaho for deposit to the public school income fund, and these moneys shall be apportioned to the public schools in the same manner as prescribed by law for other moneys credited to the public school income fund.

**History.**

I.C., § 33-1012, as added by 1981, ch. 185, § 3, p. 329.

**STATUTORY NOTES**

**Cross References.**

Public school income fund, § 33-903.

**Prior Laws.**

Former § 33-1012 (1963, ch. 13, § 136, p. 27; am. 1967, ch. 243, § 2, p. 707; am. 1972, ch. 352, § 7, p. 1040; am. 1979, ch. 10, § 1, p. 13; am. 1980, ch. 179, § 11, p. 382) was repealed by S.L. 1981, ch. 185, § 2.

**33-1013. County treasurer — County auditor — Duties.** — In addition to other duties required by this chapter, the county treasurer shall keep a separate account with each school district situate in whole or in part in his county, placing to the credit of each all moneys received through the proceeds of school district tax levies, and any other moneys due the respective districts under the provisions of law. He shall on the first day of each month give notice to the clerk of the board of any elementary district, of the debits and credits made to the account of such district during the current quarter and the balance on hand both at the beginning and at the end of the preceding quarter.

He shall keep an account of the county school fund, and of any other school funds arising from a county-wide tax levy for school purposes.

He shall pay over the moneys in any fund herein required to be kept, only upon the warrant of the county auditor.

In addition to other duties required of the county auditor by the provisions of this chapter, he shall, from time to time as required by law, draw his warrant upon any fund required to be disbursed to the treasurer of any school district.

### **History.**

1963, ch. 13, § 139, p. 27; am. 1967, ch. 243, § 3, p. 707; am. 1980, ch. 179, § 12, p. 382.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 5 of S.L. 1967, ch. 243 read: “This act shall become effective on and after the first day of July, 1967; but any apportionments made from the public school income fund, or from any county school fund, from moneys accumulated in said funds, including tax receipts which may not have been transferred prior to July 1, 1967, shall be apportioned under the law in effect prior to said date.”

**33-1014. Assessment ratios and equivalency determinations.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1963, ch. 13, § 140, p. 27; am. 1967, ch. 376, § 2, p. 1103; am. 1972, ch. 299, § 1, p. 746; am. 1974, ch. 31, § 1, p. 983; am. 1979, ch. 254, § 11, p. 661; am. 1985, ch. 107, § 11, p. 191, was repealed by S.L. 1994, ch. 316, § 2, effective July 1, 1994.

**33-1015. State revenue matching under the national school lunch act.**

— In school districts where personnel are employed to operate a school lunch program partially funded under provisions of the national school lunch act, all employer paid contributions to the social security administration for school lunch personnel shall be paid from funds received by school districts from the state general account appropriation for public school support.

**History.**

I.C., § 33-1015, as added by 1994, ch. 428, § 13, p. 1368; am. 2006, ch. 259, § 1, p. 799.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-1015, which comprised S.L. 1963, ch. 13, § 141, p. 27; am. 1963, ch. 322, § 9 [9a], p. 919; am. 1965, ch. 232, § 4, p. 553; am. 1967, ch. 376, § 3, p. 1103; am. 1978, ch. 291, § 3, p. 713, was repealed by S.L. 1979, ch. 254, § 1.

**Amendments.**

The 2006 amendment, by ch. 259, deleted “and Idaho’s public employee retirement system” following “social security administration.”

**Federal References.**

The national school lunch act, referred to in this section, is compiled as [42 USCS § 1751 et seq.](#)

**Effective Dates.**

Section 16 of S.L. 1994, ch. 428 provided: “For 1994-95 only, the district share shall be adjusted to provide that each district receives not less than one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. The provisions of this act shall be in full force and effect on and after July 1, 1994, except that this act shall

be null and void and of no force and effect if the appropriation to the educational support program is insufficient to guarantee that each individual school district receives an amount for 1994-95 which is at least equal to one hundred eight percent (108%) of the 1993-94 distribution of state educational dollars less the special program allocations in Sections 33-1002, 33-1007A and 33-2006, Idaho Code. A finding by the state superintendent of public instruction, based upon the calculations required by the provisions of Chapter 10, Title 33, Idaho Code, as amended by this act, against the actual appropriation, that the appropriation is insufficient, shall negate the provisions of this act.”

**33-1016. Levies. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1963, ch. 13, § 142, p. 27; am. 1963, ch. 322, § 10, p. 919; am. 1965, ch. 232, § 4, p. 553; am. 1967, ch. 376, § 3, p. 1103; am. 1978, ch. 291, § 3, p. 713, was repealed by S.L. 1979, ch. 254, § 1.

**33-1017. School safety and health revolving loan and grant fund. —**

(1) Fund created. There is hereby created a fund in the state treasury to be known as the school safety and health revolving loan and grant fund to which shall be credited all moneys that may be appropriated, apportioned, allocated and paid back to that fund. Moneys in this fund shall be used exclusively as provided in this section, except that moneys in this fund shall be returned to the budget stabilization fund as provided in this section.

(2) Approval of loan or grant. A school district that does not have the financial resources to abate unsafe or unhealthy conditions identified pursuant to [section 33-1613, Idaho Code](#), and which is eligible to seek additional funds under subsection (5)(b)(ii) of [section 33-1613, Idaho Code](#), may apply to the state treasurer for a loan and, if eligible, a grant from the [school] safety and health revolving loan and grant fund. A school district that has borrowed money from the Idaho safe school facilities loan program may apply for a grant of interest from the [school] safety and health revolving loan and grant fund. The loan or grant shall be approved if the school district's application meets the criteria of [section 33-1613, Idaho Code](#), and of this section. If the board of examiners finds that existing and anticipated loans or grants under this section have depleted the school safety and health revolving loan and grant fund to an extent that the fund does not have available sufficient moneys to loan to an eligible school district, the board of examiners shall declare that additional loans may be made from the budget stabilization fund in [section 57-814, Idaho Code](#), up to any limits of the use of that fund provided by statute or declared by the governor in time of general revenue shortfalls or major disaster.

(3) Conditions of loan or grant — Repayment of loan.

(a) The school district's application shall identify the unsafe or unhealthy conditions that would be abated with the proceeds of the loan or grant and, if a loan, shall propose a method of and timetable for abating those conditions and for repaying the loan.

(b) The state treasurer shall review the application to determine whether the application is for abatement of unsafe or unhealthy conditions as described in [section 33-1613, Idaho Code](#), and to determine whether the



estimated costs of abatement and proposed plan of abatement is reasonable. In reviewing the application, the state treasurer may call upon the assistance of the state division of building safety, the state fire marshal, the state department of administration, the state board of education, the state department of education, or other knowledgeable persons to determine whether conditions identified to be abated meet the criteria of [section 33-1613, Idaho Code](#), and to determine whether the plan of abatement, estimated costs of abatement and proposed methods of abatement are reasonable. The state treasurer shall process the application for a loan or grant within thirty-five (35) days after its receipt.

- (i) If the state treasurer determines that the application has not identified unsafe or unhealthy conditions as described in [section 33-1613, Idaho Code](#), the state treasurer shall return the application with a written statement that contains reasons why the loan or grant application does not meet the criteria of this section and of [section 33-1613, Idaho Code](#).
- (ii) If the state treasurer determines that the application has identified unsafe or unhealthy conditions as described in [section 33-1613, Idaho Code](#), the state treasurer shall then determine whether the application has proposed reasonable methods of and reasonable estimates of costs of abatement. The state treasurer shall approve the plan of abatement if the school district has proposed a reasonable method of abatement and if its estimated costs of abatement are reasonable; otherwise, the state treasurer shall return the application with a written statement how the application can be amended to qualify.
- (c) If the application is for a loan, the state treasurer may accept the school district's proposed method of and timetable for repaying the loan or may impose reasonable alternative or substitute methods of and timetables for repayment consistent with this subsection, which alternative or substitute methods shall be binding on the school district. At a minimum, the school district shall be required to repay in each fiscal year succeeding the year of the loan an amount no less than the lottery proceeds that the school district would otherwise receive for that fiscal year and additional foundation support moneys, if any, accruing as a result of an initial overestimation of state average daily attendance support units and later distribution of residual amounts resulting from

fewer support units than originally estimated. The loan shall provide for the school safety and health revolving loan and grant fund, or the budget stabilization fund, to the extent that it was the source of the loan, to intercept the lottery proceeds that would otherwise go to the school district until the loan is fully repaid. In addition, the state treasurer may impose reasonable fiscal conditions on the school district during the term of loan repayment including, but not limited to, restrictions in use of otherwise unrestricted school district moneys to assist in repayment of the loan or in abatement of unsafe or unhealthy conditions, the declaration of a financial emergency during some or all of the term of repayment of the loan, or interception by the school safety and health revolving loan and grant fund of a portion of the state foundation program payments under chapter 10, title 33, Idaho Code, that would otherwise go to the school district to repay the loan. The initial term of the loan shall not exceed ten (10) years, but may be extended in the state treasurer's discretion for another ten (10) years.

(d) If a loan is approved, the state treasurer shall establish a line of credit for the school district and monthly reimburse the school district for costs incurred to abate the unsafe or unhealthy conditions identified as the reason for the loan. The state treasurer may prescribe forms and procedures for administration of this line of credit.

(e) A school district may repay its loan or any portion of its loan in advance at any time without penalty.

(4) Interest. Loans to school districts under this section shall bear interest at the average rate of interest that would be available to the state treasury were the loan funds retained in the state treasury, as determined by the state treasurer.

(5) Certification of loan funds spent. If a school district obtains a loan pursuant to this section, the board of trustees shall certify the total expenditures of loaned funds that were actually spent to abate unsafe and unhealthy conditions.

(6) Excess funds. If any funds loaned pursuant to this section were not spent on abatement of unsafe and unhealthy conditions, they must be returned to the school safety and health [revolving] loan and grant fund or the budget stabilization fund, as the case may be. This subsection shall be

judicially enforceable by the state treasurer, and any amounts due for repayment under this subsection may be recovered by offset from state foundation program moneys that would otherwise be paid to the school district.

(7) Eligibility for grant. After complying with the provisions of [section 33-1613, Idaho Code](#), school districts that borrow money from the Idaho safe schools facilities loan program pursuant to [section 33-804A, Idaho Code](#), or that refinance through the Idaho safe schools facilities loan program loans for money borrowed under this section or that finance abatement of unsafe and unhealthy conditions through indebtedness pursuant to chapter 11, title 33, Idaho Code, may apply for a grant from the school safety and health revolving loan and grant fund to pay for eligible interest costs incurred on loan proceeds used to abate unsafe and unhealthy conditions. If the school district's application for a grant is accepted, then the school district will qualify for a grant of the present value of the qualifying percentage of the interest costs of the loan associated with abating unsafe and unhealthy conditions as follows:

(a) If the school district is participating in the Idaho safe schools facilities loan program, within seven (7) days after the approved school district receives loan proceeds from the Idaho safe schools facilities loan fund, the state treasurer shall provide funds to the school district in the amount of the qualifying percentage of the present value of the interest costs associated with abating unsafe and unhealthy conditions.

(b) If a school district has obtained a loan from the school health and safety revolving loan and grant fund and has refinanced its loan through the Idaho safe schools facilities program and prepays the outstanding principal of its loan, the school district shall be eligible for a grant of the qualifying percentage of the present value of the outstanding interest costs associated with the prepaid principal.

(c) If the school district has financed the abatement of unsafe or unhealthy conditions through indebtedness pursuant to chapter 11, title 33, Idaho Code, within seven (7) days after the school district receives bond proceeds, the state treasurer shall provide funds to the school district in the amount of the qualifying percentage of the present value of

the interest costs associated with abating unsafe and unhealthy conditions.

(8) Present value. The present value of the interest costs associated with money borrowed under the Idaho safe schools facilities loan program shall be calculated by the state treasurer using a method of equal annual loan payments and a discount rate of the interest rate prescribed in subsection (4) of this section on the date that the school district receives funds from the Idaho safe schools facilities loan fund. The present value of the unpaid interest costs for principal prepayments to the school safety and health revolving loan and grant fund shall be calculated by the state treasurer by summing the unpaid interest that would be paid without the principal prepayment and discounting it at the interest rate prescribed in subsection (4) of this section on the date that the treasurer receives the prepayment. The present value of the interest costs associated with money borrowed by a school district in a bond issue shall be calculated by the state treasurer using the school district's actual schedule for making interest payments on the bonds and discounting those interest payments by the interest rate prescribed in subsection (4) of this section on the date that the school district receives funds from the bond issue.

(9) Qualifying percentage. The qualifying percentage of the interest costs of a school district applying for a grant of interest under this section shall be determined as follows: For a school district borrowing money under the Idaho safe schools facilities loan program or refinancing a loan made under this section with money borrowed under the Idaho safe schools facilities program or incurring bonded indebtedness for safe and healthy schools, the state treasurer shall express:

(a) the total of the bond and plant facilities levies imposed by the school district (including the levy for which the application is made), and

(b) the total levies imposed by the school district (including the levy for which the application is made)

as a fraction of assessed value for the most recent assessment against which the school district's existing levies are made.

The qualifying percentage of interest granted under this section shall be the higher of the amounts shown in the following tables:

Table 1 — Bond and Plant Facilities Levies

Bond Plus Plant Facilities Levy	Qualifying Percentage
Less than .0019 .....	10%
More than .0019 and less than .0029 .....	20%
More than .0029 and less than .0039 .....	30%
More than .0039 .....	40%

Table 2 — Total Levies

Total Levy	Qualifying Percentage
Less than .0060 .....	0%
More than .0060 and less than .0072 .....	25%
More than .0072 and less than .0084 .....	50%
More than .0084 and less than .0096 .....	75%
More than .0096 .....	100%

(10) Interest costs for abatement of unsafe and unhealthy conditions. The interest costs for abatement of unsafe and unhealthy conditions shall be calculated by determining the percentage of the loan proceeds or prepayment of the loan that will be used to abate unsafe and unhealthy conditions.

(11) Procedures. The state treasurer may prescribe forms for applying for a loan or grant under this section. No actions taken under this section are contested cases or rulemaking subject to chapter 52, title 67, Idaho Code, and none of the contested case or rulemaking procedures of chapter 52, title 67, Idaho Code, apply to actions taken under this section.

(12) The state treasurer's authority to accept applications for and to approve grants of interest from the school safety and health revolving loan and grant fund shall cease on July 1, 2003.

### History.

**I.C., § 33-1017**, as added by 2000, ch. 219, § 2, p. 607; am. 2001, ch. 326, § 2, p. 1143; am. 2002, ch. 157, § 1, p. 453.

## STATUTORY NOTES

### Cross References.

Budget stabilization fund, § 57-814.

Idaho safe school facilities loan program, § 33-804A.

State board of examiners, § 67-2001 et seq.

State department of administration, § 67-5701 et seq.

State division of building safety, § 67-2601A.

State fire marshal, §§ 41-254, 41-255.

State treasurer, § 67-1201 et seq.

### **Compiler's Notes.**

The word "school" has been inserted in brackets in subsection (2) two times to correct the name of the referenced fund, created by this section.

The word "revolving" has been inserted in the first sentence of subsection (6) to correct the name of the referenced fund, created by this section.

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 3 of S.L. 2000, ch. 219, provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2000; provided however, this act shall not apply to any expenditure of lottery moneys during the 1999-2000 school year that were legally encumbered before the time of passage and approval of this act." Approved April 12, 2000.

Section 6 of S.L. 2001, ch. 326 declared an emergency. Approved April 4, 2001.

Section 2 of S.L. 2002, ch 157 declared an emergency. Approved March 21, 2002.

**33-1018. Public school discretionary funding variability.** — The legislature shall annually state in the appropriation for the educational support program/division of operations the estimate of the total discretionary funding provided per support unit. The department of education shall, before the end of each fiscal year, calculate the actual discretionary funding available per support unit.

(1) If the total estimated discretionary funding per support unit stated in the appropriation for the educational support program/division of operations is lower than the actual discretionary funding available per support unit, then the state controller shall multiply the difference by the number of actual support units, and transfer the result from the public school income fund to the public education stabilization fund and the final distributions to school districts from the department of education shall be reduced by a like amount.

(2) If the total estimated discretionary funding per support unit stated in the appropriation for the educational support program/division of operations is greater than the actual discretionary funding available per support unit, then the state controller shall multiply the difference by the number of actual support units, and transfer the result from the public education stabilization fund to the public school income fund. This transfer shall be limited to moneys available in the public education stabilization fund. Moneys transferred from the public education stabilization fund to the public school income fund under the provisions of this section are hereby continuously appropriated for the educational support program/division of operations.

**History.**

I.C., § 33-1018, as added by 2003, ch. 372, § 13, p. 986.

**STATUTORY NOTES**

**Cross References.**

Public education stabilization fund, § 33-907.

Public school income fund, § 33-903.

State controller, § 67-1001 et seq.



**33-1018A. Other uses of public education stabilization fund.** — (1) If, in any fiscal year, general fund revenues are inadequate to sustain general fund appropriations made for that year by the legislature, then the board of examiners may transfer moneys from the public education stabilization fund to the general fund. The maximum amount that may be transferred by the board in any fiscal year shall be determined by dividing the total of all general fund appropriations for the educational support program by the total of all general fund appropriations, and multiplying the result by the amount of the shortfall in general fund revenues.

(2) The governor may recommend, and the legislature may authorize, the appropriation of moneys from the public education stabilization fund to offset declining distributions from the public school earnings reserve fund to the public school income fund.

**History.**

I.C., § 33-1018A, as added by 2003, ch. 372, § 14, p. 986.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Public education stabilization fund, § 33-907.

Public school earnings reserve fund, § 33-902A.

Public school income fund, § 33-903.

State board of examiners, § 67-2001 et seq.

**33-1018B. School building maintenance matching funds.** — If the amount of money appropriated from the school district building account created in section 33-905, Idaho Code, is insufficient to meet the state matching fund requirements of section 33-1019, Idaho Code, then such insufficiency shall be made up with a distribution from the public education stabilization fund created in section 33-907, Idaho Code.

### **History.**

I.C., § 33-1018B, as added by 2006, ch. 311, § 7, p. 957.

## **STATUTORY NOTES**

### **Legislative Intent.**

Section 1 of S.L. 2006, ch. 311 provided: “Legislative Findings and Intent. The Legislature hereby finds that:

“(1) **Section 1, Article IX, of the Constitution** of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, **123 Idaho 573 (1993)**, the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of **Section 1, Article IX, of the Constitution** of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted **Section 33-1612, Idaho Code**, which defined thoroughness and included ‘a safe environment conducive to learning’ among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, **132 Idaho 559 (1999)**, the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive

to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of [Section 1, Article IX, of the Constitution](#) of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by [Section 1, Article IX, of the Constitution](#) of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: “[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.” Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

“(7) In response to the Supreme Court’s 2005 decision, and mindful that the Supreme Court has recognized the Legislature’s efforts, following the district court’s decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature’s responsibility under [Section 1, Article IX, of the Constitution](#) of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

“(8) In proposing this Act, it is the intent of the Legislature to:

“(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

“(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district’s relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district’s full share of state lottery funds to be used for school building maintenance and repairs; and

“(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

“(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district’s share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district’s fair and equitable share of the costs of repair or replacement that compares the school district’s bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

“(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district’s relative ability to pay.”

### **Compiler’s Notes.**

Section 13 of S.L. 2006, ch. 311 provided: “Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any

person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect.”

**33-1018C. Public education stabilization fund — Replacement funds.**

— In the event that moneys are withdrawn from the public education stabilization fund for the circumstances authorized pursuant to section 33-1018 or 33-1018B, Idaho Code, then the joint finance-appropriations committee shall consider transferring the amount of the withdrawal as a supplemental appropriation to the public education stabilization fund for the current fiscal year.

**History.**

I.C., § 33-1018C, as added by 2017, ch. 211, § 2, p. 514.

**STATUTORY NOTES**

**Cross References.**

Public education stabilization fund, § 33-907.

**33-1019. Allocation for school building maintenance required.** — (1) School districts shall annually allocate moneys for school building maintenance from any source available to the district equal to at least two percent (2%) of the replacement value of school buildings, less the receipt of state funds as provided in this section. Any school district expending more than four percent (4%) of the replacement value of school buildings for school building maintenance in any single fiscal year, beginning with the expenditures of fiscal year 2005, may apply the excess as a credit against the two percent (2%) requirement of this section until such credit is depleted or fifteen (15) years have expired. The state shall annually provide funds to be allocated for school building maintenance as follows:

- (a) Divide one (1) by the school district's value index for the fiscal year, as calculated pursuant to [section 33-906B, Idaho Code](#); and
- (b) Multiply the result by one-half of one percent (0.5%) of the replacement value of school buildings.
- (c) For purposes of the calculation in this subsection (1), public charter schools shall be assigned a value index of one (1).

(2) State funds shall be appropriated through the educational support program/division of facilities and disbursed from the school district building account. The order of funding sources used to meet the state funding requirements of this section shall be as follows:

- (a) State lottery funds distributed pursuant to [section 33-905\(2\), Idaho Code](#);
- (b) If state lottery funds are insufficient to meet the state funding requirements of this section, then other state funds available pursuant to [section 33-905\(3\), Idaho Code](#), shall be utilized; and
- (c) If the funds in paragraphs (a) and (b) of this subsection (2) are insufficient to meet the state funding requirements of this section, then funds available pursuant to [section 33-1018B, Idaho Code](#), shall be utilized.

(3) Moneys allocated for school building maintenance shall be used exclusively for the maintenance and repair of school buildings or any serious or imminent safety hazard on the property of said school buildings as identified pursuant to chapter 80, title 39, Idaho Code, and shall be utilized, first, to abate serious or imminent safety hazards, as identified pursuant to chapter 80, title 39, Idaho Code. Unexpended moneys in a school district's school building maintenance allocation shall be carried over from year to year and shall remain allocated for the purposes specified in this subsection (3). The replacement value of school buildings shall be determined by multiplying the number of square feet of building floor space in school buildings by eighty-one dollars and forty-five cents (\$81.45). Notwithstanding the definition in subsection (8) of this section, school buildings that are less than one (1) year old on the first day of school shall not be used in the replacement value calculation. The joint finance-appropriations committee shall annually review the replacement value per square foot when setting appropriations for the educational support program and may make adjustments to this figure as necessary.

(4) For school buildings first occupied between July 1, 2009, through September 30, 2019, regarding the replacement value calculation that school districts are directed to use to determine the amount of moneys such districts shall allocate for school building maintenance as directed by subsection (1) of this section, a portion of the square footage of school buildings first occupied on or after July 1, 2009, and constructed pursuant to the provisions of [section 33-356, Idaho Code](#), shall not be used in the replacement value calculation, based on the following schedule:

- (a) For school buildings at least one (1) year old but less than two (2) years old on the first day of school, exclude one hundred percent (100%) of the square footage;
- (b) For school buildings at least two (2) years old but less than three (3) years old on the first day of school, exclude eighty percent (80%) of the square footage;
- (c) For school buildings at least three (3) years old but less than four (4) years old on the first day of school, exclude sixty percent (60%) of the square footage;



(d) For school buildings at least four (4) years old but less than five (5) years old on the first day of school, exclude forty percent (40%) of the square footage; and

(e) For school buildings at least five (5) years old but less than six (6) years old on the first day of school, exclude twenty percent (20%) of the square footage.

(5) The amount of relief provided to any school district pursuant to subsection (4) of this section shall not exceed the amount that would be provided if the school district had a value index of one (1).

(6) School districts shall submit the following to the state department of education by not later than the third Friday in December:

(a) The number of square feet of school building floor space; and

(b) The funds and fund sources allocated for school building maintenance and any unexpended allocations carried forward from prior fiscal years; and

(c) The projects on which moneys from the school district's school building maintenance allocation were expended, and the amount and categories of expenditures; and

(d) The planned uses of the school district's school building maintenance allocation.

The state department of education shall transmit a summary of such reports to the legislature by not later than January 15 of the following year.

(7) If a school district that is participating in the relief provided for in subsection (4) of this section is forgiven the requirement to allocate the school district portion of the moneys for the two percent (2%) of building replacement value for building maintenance provided in subsection (1) of this section, then once the requirements of subsection (1) of this section are reinstated, the provisions of subsection (4) of this section shall recommence from the time the forgiveness took effect.

(8) For the purposes of this section:

(a) "Annually" means each fiscal year.

(b) “School building” means buildings that are owned by the school district or leased by the school district through a lease-purchase agreement and are regularly occupied by students.

(c) “School district” means a school district or public charter school.

### **History.**

**I.C., § 33-1019**, as added by 2006, ch. 311, § 8, p. 957; am. 2007, ch. 142, § 1, p. 412; am. 2007, ch. 354, § 6, p. 1051; am. 2009, ch. 169, § 3, p. 512; am. 2012, ch. 66, § 1, p. 188.

## **STATUTORY NOTES**

### **Cross References.**

Joint finance-appropriations committee, § 67-432 et seq.

School district building account, § 33-905.

### **Amendments.**

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 142, in the introductory paragraph in subsection (1), in the first sentence, substituted “shall annually allocate moneys for school building maintenance” for “shall annually deposit to a school building maintenance fund moneys” and “receipt of state funds” for “deposit of state funds,” added the second sentence, and in the last sentence, substituted “to be allocated for school building maintenance as follows” for “to be deposited into the school building maintenance fund as follows”; in the introductory paragraph in subsection (3), in the first sentence, substituted “Moneys allocated for school building maintenance” for “Moneys in a school district’s building maintenance fund,” and inserted “or any serious or imminent safety hazard on the property of said school buildings as identified pursuant to chapter 80, title 39, Idaho Code,” in the second sentence, substituted “maintenance allocation” for “maintenance fund,” and added “and shall remain allocated for the purposes specified in this subsection (3),” and added the fourth sentence; in subsection (3)(b), substituted “fund sources allocated for school building maintenance and any unexpended allocations carried forward” for “fund sources deposited into

the school district's school building maintenance fund and the fund balance carried forward"; in subsections (3)(c) and (3)(d), substituted "maintenance allocation" for "maintenance fund"; in subsection (3)(c), deleted "from the fund" from the end; in subsection (3)(d), deleted "monies in" following "uses of"; inserted "regularly" in subsection (4)(a); and added subsection (4)(c).

The 2007 amendment, by ch. 354, substituted "eighty-one dollars and forty-five cents" for "eighty dollars" in the introductory paragraph in subsection (3).

The 2009 amendment, by ch. 169, updated the internal reference in the next-to-last sentence in subsection (3); and added subsections (4), (5), and (7), redesignating the other subsections accordingly.

The 2012 amendment, by ch. 66, substituted "the third Friday in December" for "December 1" at the end of the introductory paragraph in subsection (6).

### **Legislative Intent.**

Section 1 of S.L. 2006, ch. 311 provided: "Legislative Findings and Intent. The Legislature hereby finds that:

"(1) **Section 1, Article IX, of the Constitution** of the state of Idaho provides that 'it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.'

"(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, **123 Idaho 573 (1993)**, the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of **Section 1, Article IX, of the Constitution** of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

"(3) In response to that action, the Legislature enacted **Section 33-1612, Idaho Code**, which defined thoroughness and included 'a safe environment conducive to learning' among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, 132 Idaho 559 (1999), the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of [Section 1, Article IX, of the Constitution](#) of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by [Section 1, Article IX, of the Constitution](#) of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitutionally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: “[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.” Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

“(7) In response to the Supreme Court’s 2005 decision, and mindful that the Supreme Court has recognized the Legislature’s efforts, following the district court’s decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature’s responsibility under [Section 1, Article IX, of the Constitution](#) of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or

replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

“(8) In proposing this Act, it is the intent of the Legislature to:

“(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

“(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district’s relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district’s full share of state lottery funds to be used for school building maintenance and repairs; and

“(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

“(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district’s share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district’s fair and equitable share of the costs of repair or replacement that compares the school district’s bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

“(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district’s relative ability to pay.”

Section 1 of S.L. 2009, ch. 169 provided: “Legislative Intent. It is the intent of the Legislature that:

“(1) Every dollar spent on energy costs in an Idaho public school is a dollar that is not spent in the direct education of students in the classroom. As energy costs increase, the diversion of funding away from the classroom will accelerate. The state has a primary interest in minimizing K-12 public school building energy costs since funding for energy comes directly from the state General Fund.

“(2) School districts recognize that funding will always be limited and that efficient use of every dollar is vital to providing the highest possible level of educational services. It is apparent that designing and constructing more energy efficient buildings accrue cumulative benefits to both the state and to the school district. This is because any energy efficiency built into a new school building will save money each and every year of operation for the life of that school building. Small gains in energy efficiency result in large payoffs over the life of operations of a building.

“(3) This act provides an incentive for school districts to use certain design and construction processes for constructing high quality school buildings. Using two processes, integrated design and fundamental commissioning, will result in efficient design and construction implementation of higher performance new public school buildings. Using this design and construction process, it is the intent of this act to make energy efficiency a priority for our school districts in the design and construction of new public school buildings.”

### **Compiler’s Notes.**

Section 13 of S.L. 2006, ch. 311 provided: “Nonseverability. With the exception of Sections 4, 11 and 12 of this act, the remaining provisions of this act are hereby declared to be nonseverable and if any provision of the remaining portions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render all such remaining portions of this act null, void and of no force or effect.”

Section 4 of S.L. 2009, ch. 169 provided: “State Department of Education — Report. On or before July 1, 2018, the State Department of Education shall submit a report to the State Board of Education and the chairmen of the following legislative committees: Senate State Affairs; House Environment, Energy and Technology; Senate and House Education;

and the Energy, Environment and Technology Interim Committee. Such report shall detail the extent to which public school districts have participated, implemented and benefited from the provisions of this act.”

Section 3 of S.L. 2009, ch. 340 provided: “The provisions of [Section 33-1019, Idaho Code](#), notwithstanding, for the period July 1, 2009, through June 30, 2010, only, an amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Said amount shall be determined by the State Department of Education as follows:

“(a) Subtract from the local maintenance match requirement all plant facility levy funds levied for tax year 2009.

“(b) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (a) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building.

“(c) Divide the balance of any funds remaining after the calculation provided for in subsection (b) of this section, by two (2).

“School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education.”

Section 1 of S.L. 2011, ch. 299 provided: “The provisions of [Section 33-1019, Idaho Code](#), notwithstanding, for the period July 1, 2011, through June 30, 2012, only, the current fiscal year’s amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

“(1) Subtract from the local maintenance match requirement all plant facility levy funds levied for tax year 2011.

“(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional

funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building.

“School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education.”

Section 1 of S.L. 2012, ch. 331 provided: “The provisions of [Section 33-1019, Idaho Code](#), notwithstanding, for the period July 1, 2012, through June 30, 2013, only, the current fiscal year’s amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

“(1) Subtract from the local maintenance match requirement all plant facility levy funds levied for tax year 2012.

“(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building.

“School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education.”

Section 1 of S.L. 2013, ch 300 provided: “The provisions of [Section 33-1019, Idaho Code](#), notwithstanding, for the period July 1, 2013, through June 30, 2014, only, two-thirds (2/3) of the current fiscal year’s amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:



“(1) Subtract from two-thirds (2/3) of the local maintenance match requirement two-thirds (2/3) of all plant facility levy funds levied for tax year 2012.

“(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building. School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education.”

Section 1 of S.L. 2014, ch. 257 provided: “The provisions of [Section 33-1019, Idaho Code](#), notwithstanding, for the period July 1, 2014, through June 30, 2015, only, one-third (1/3) of the current fiscal year’s amount of local maintenance match moneys normally required to be allocated for the maintenance and repair of student-occupied buildings may be spent on other one-time, nonpersonnel costs, at the discretion of the school district. Such amount shall be determined by the State Department of Education as follows:

“(1) Subtract from one-third (1/3) of the local maintenance match requirement one-third (1/3) of all plant facility levy funds levied for tax year 2014.

“(2) Subtract from the balance of any funds remaining after the subtraction provided for in subsection (1) of this section, any additional funds necessary to fully remediate all recommendations and code violations identified in the most recent inspection of each student-occupied building conducted by the Division of Building Safety, excluding any recommendations for which the least expensive remediation solution is the replacement of the building.

“School districts shall furnish information pursuant to the provisions of this section, as may be required by the State Department of Education.”

**Effective Dates.**

Section 3 of S.L. 2007, ch. 142 declared an emergency retroactively to July 1, 2006 and approved March 21, 2007.

**33-1020. Idaho digital learning academy funding.** — Of the moneys appropriated for the educational support program, an amount shall be distributed to support the Idaho digital learning academy, created pursuant to chapter 55, title 33, Idaho Code. For the purposes of this section, an “enrollment” shall be counted each time an Idaho school age child enrolls in an Idaho digital learning academy class. A single child enrolled in multiple classes shall count as multiple enrollments. Summer enrollments shall be included in the fiscal year that begins that summer. The amount distributed shall be calculated as follows:

(1) A base amount shall be distributed, equal to the current fiscal year’s statewide average salary-based apportionment funding per midterm support unit, multiplied by twenty-six (26).

(2) A variable amount shall be distributed, equal to the number of enrollments multiplied by the current fiscal year’s appropriation of state funds for the educational support program per student reported in attendance for the first reporting period, divided by twenty-three (23).

The state department of education shall make an estimated distribution of funds to the Idaho digital learning academy by no later than July 31 of each fiscal year, consisting of eighty percent (80%) of the estimated funding for the fiscal year. The balance of all remaining funds to be distributed, pursuant to the calculations in this section, shall be distributed by no later than May 15 of the same fiscal year.

### **History.**

I.C., § 33-1020, as added by 2007, ch. 353, § 12, p. 1045; am. 2013, ch. 154, § 2, p. 360.

## **STATUTORY NOTES**

### **Amendments.**

The 2013 amendment, by ch. 154, in subsection (1), deleted “fixed” preceding “base amount” near the beginning and substituted “twenty-six (26)” for “seven (7)” at the end; deleted former subsection (2), which read,

“A variable base amount shall be distributed each time the number of enrollments meets or exceeds an increment of five thousand (5,000). The amount so distributed shall be equal to the number of such increments, multiplied by the current fiscal year’s statewide average salary-based apportionment funding per midterm support unit, multiplied by four and thirty-three hundredths (4.33)” and redesignated former subsection (3) as subsection (2); and substituted “appropriation of state funds for the educational support program per student reported in attendance for the first reporting period, divided by twenty-three (23)” for “statewide average salary-based apportionment funding per midterm support unit, divided by one hundred forty-three (143)” in subsection (3).

### **Legislative Intent.**

Section 6 of S.L. 2007, ch. 353 provided “It is legislative intent that the Idaho Safe and Drug-Free School Program shall include the following:

“(1) Districts will develop a policy and plan which will provide a guide for their substance abuse problems.

“(2) Districts will have an advisory board to assist each district in making decisions relating to the programs.

“(3) The districts’ substance abuse programs will be comprehensive to meet the needs of all students. This will include prevention programs, student assistance programs that address early identification and referral, and aftercare.

“(4) Districts shall submit an annual evaluation of their programs to the State Department of Education as to the effectiveness of their programs.”

### **Compiler’s Notes.**

This section was amended by S.L. 2011, ch. 247, effective April 8, 2011. The amendment by S.L. 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, ch. 300, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

**33-1021. Math and science requirement.** — In order to meet state graduation requirements regarding math and science courses, moneys shall be distributed to school districts to defray the cost of providing additional math and science courses. Moneys so distributed shall be used to hire additional high school math and science teachers or to defray costs associated with providing math and science courses to high school students. Moneys shall be distributed to school districts from the moneys appropriated to the educational support program for each regular high school, not including alternative schools, based on the following criteria:

(1) For each school with enrollment of 99 or less, distribute the equivalent of one and one-quarter (1.25) of a classified staff position.

(2) For each school with enrollment of 100 to 159, distribute the equivalent of one ninth (1/9) of a classified staff position.

(3) For each school with enrollment of 160 to 319, distribute the equivalent of two sevenths (2/7) of a classified staff position.

(4) For each school with enrollment of 320 to 639, distribute the equivalent of one (1.0) instructional staff position, based on the statewide average funding per position.

(5) For each school with enrollment of 640 or more, distribute the equivalent of one (1.0) instructional staff position, based on the statewide average funding per position, and three-quarters (0.75) of a classified staff position. For the purposes of these school size classifications for regular high schools that serve only grades 10-12, ninth grade students who will attend the regular high school upon matriculating to tenth grade shall be included as enrolled in the regular high school.

### **History.**

I.C., § 33-1021, as added by 2013, ch. 98, § 2, p. 236.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-1021, which comprised I.C., § 33-1021, as added by 2011, ch. 247, § 12, p. 669; am. 2011, ch. 300, § 6, p. 857; am. 2012, ch. 266, § 1, p. 741, was enacted by S.L. 2011, ch. 247, effective April 8, 2011. Session Laws 2011, Chapter 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendments by S.L. 2011, Chapter 300 and S.L. 2012, Chapter 266, became null and void.

**Compiler's Notes.**

Another former § 33-1021, which comprised I.C., § 33-1021, as added by 2013, ch. 340, § 5, p. 890, became null and void after June 30, 2013.

**33-1022. Public school technology. [Null and void.]** — Null and void, pursuant to S.L. 2013, ch. 340, § 8, effective July 1, 2013.

**History.**

**I.C., § 33-1022**, as added by 2013, ch. 340, § 6, p. 890.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-1022, which comprised **I.C., § 33-1022**, as added by 2011, ch. 247, § 13, p. 669; am. 2012, ch. 220, § 1, p. 601, was enacted by S.L. 2011, Chapter 247, effective April 8, 2011. Session Laws 2011, Chapter 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendment by S.L. 2012, Chapter 220, became null and void.

**33-1023. Moneys provided from unanticipated public charter school closure.** — In the event a public charter school closes and ceases to provide educational instruction during the course of a school year, the following provisions relating to funding shall apply:

(1) A school district or public charter school shall report to the state department of education all newly enrolled students when such students have enrolled from a public charter school that has closed during a school year.

(2) The state department of education shall use the reported enrollment information provided for in subsection (1) of this section to calculate the funding that the district or public charter school would have received had those reported new enrollees been enrolled in such district for the entire school year. Such funding shall be prorated based on the percent of days left in the school year following the enrollment of new students. Such funding shall be included in the next scheduled payment to the school district or public charter school.

**History.**

I.C., § 33-1021, as added by 2011, ch. 310, § 1, p. 878; am. 2016, ch. 47, § 15, p. 98.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 47, redesignated the section from § 33-1021.

**Compiler's Notes.**

Both S.L. 2011, ch. 247, § 12, as amended by S.L. 2011, ch. 300, § 6, and S.L. 2011, ch. 310, § 1 enacted a new code section designated as § 33-1021. Because the provision enacted by S.L. 2011, Chapter 247 was effective April 8, 2011, it has been retained as § 33-1021. The provision enacted by S.L. 2011, Chapter 310, which was effective July 1, 2011, was designated, through the use of brackets, as § 33-1023 (§ 33-1022 was enacted by S.L.



2011, ch. 247, § 13). The redesignation of this section enacted by S.L. 2011, Chapter 310 was made permanent by S.L. 2016, ch. 47, § 15, effective July 1, 2016.

**33-1024. Online portals.** — (1) Of the moneys appropriated to the educational support program, up to one hundred fifty thousand dollars (\$150,000) may be expended for the development and maintenance of an internet-based portal of available online, nonsectarian K-12 or dual credit courses; an adult education portal; and a parent resource portal.

(2) The nonsectarian K-12 or dual credit courses portal shall include any of the following: (a) Idaho digital learning academy; (b) Idaho public school districts; (c) Idaho public charter schools;

(d) Idaho public colleges and universities; (e) Idaho private colleges and universities accredited by the same organization that accredits Idaho's public colleges and universities; and (f) Any provider of online courses; provided however, that the courses available on the portal have been verified and approved by the state department of education to meet state content standards.

(3) At a minimum, the nonsectarian K-12 or dual credit courses portal shall: (a) Include and display customer ratings from students and parents, based upon previous student enrollment with the online course, provider and instructor. Such ratings shall, at a minimum, evaluate the quality of content, instruction, communications and ease of use; (b) Include the capacity for parents to notify their student's home school of their desire to enroll their student in an online course listed on the portal; and (c) Facilitate communications between listed online course providers, students and parents and the home school in which the student is enrolled.

(4) At a minimum, the adult education or parent resource portal shall provide access to tools and resources focused on K-12 education.

### **History.**

**I.C., § 33-1024**, as added by 2013, ch. 154, § 3, p. 360; am. 2017, ch. 194, § 1, p. 460.

## **STATUTORY NOTES**

### **Cross References.**

Idaho digital learning academy, § 33-5501 et seq.

**Amendments.**

The 2017 amendment, by ch. 194, substituted “Online portals” for “Online course portal” in the section heading; substituted “an adult education portal; and a parent resource portal” for “available from” at the end of subsection (1); inserted the present subsection (2) designation and added “The nonsectarian K-12 or dual credit courses portal shall include” in the introductory paragraph of that subsection; redesignated former paragraphs (1)(a) through (1)(f) as present paragraphs (2)(a) through (2)(f); redesignated former subsection (2) as present subsection (3), inserted “nonsectarian K-12 or dual credit courses” in the introductory paragraph of subsection (3); and added subsection (4).

**33-1025. Wireless technology standards.** — (1) School districts and public charter schools shall demonstrate to the state department of education that wireless infrastructure meets or exceeds the wireless technology standards recommended by the education opportunity resource committee and approved by the state department of education. The education opportunity resource committee shall annually review and recommend wireless technology standards to the state department of education.

(2) Content filtering and wireless security. Internet content filtering shall be included as part of any wireless internet access made available to children, as required by [section 33-132, Idaho Code](#). The filtering solution shall be configurable to school district policies on acceptable, age appropriate internet content. The content filtering shall include the ability: (a) For each school to manage its own filtering policies, including the decision to block specific categories of content and to maintain its own whitelist and blacklist overrides; (b) To provide individual district utilization and filtering reports, including the most frequently visited websites, the most frequently visited categories, the most frequently blocked websites, search terms most frequently used and the top authenticated users; (c) To audit all changes to content filtering; (d) For all reporting and management of content filtering to be available through any internet-connected browser and efficiently perform all content filtering functions; and (e) To protect against eavesdropping and unauthorized access, which shall include encryption or other techniques to provide assurances that the school district may turn on or off as school district policy indicates.

### **History.**

[I.C., § 33-1025](#), as added by 2014, ch. 352, § 1, p. 878; am. 2018, ch. 99, § 1, p. 208.

## **STATUTORY NOTES**

### **Cross References.**

Education opportunity resource committee, § 33-5603.

**Amendments.**

The 2018 amendment, by ch. 99, designated and rewrote the former introductory paragraph, which read: “In order to be eligible to receive state funds for wireless technology infrastructure serving grades 9-12, school districts shall first demonstrate to the state department of education that said infrastructure meets or exceeds the following” as present subsection (1); deleted former subsections (1) and (2), concerning wireless system functionality and validation testing; redesignated former subsection (3) as present subsection (2); and deleted the former last paragraph in the section, which read: “For the purposes of this section, the term ‘school district’ also means public charter school. The state department of education shall develop wireless functionality, performance and reliability requirements. The department may consult with the Idaho education technology association in developing the requirements.”

**Compiler’s Notes.**

The abbreviation enclosed in parentheses so appeared in the law as enacted.

**33-1026. Mandatory public school funding formula review.** — The senate and house of representatives education committees shall conduct a comprehensive review of the public school funding formula at least once every five (5) years, with the first such review to occur by July 1, 2024.

**History.**

I.C., § 33-1026, as added by 2019, ch. 328, § 4, p. 971.

**33-1027. Student enrollment counts and rulemaking.** — The state board of education shall promulgate rules that set forth the procedures for determining student enrollment counts by school, school district, and statewide, and the process for reporting such counts. Such rules shall be consistent with the following:

(1) Full-time enrollment (FTE) shall be based on enrollment in any school district or public charter school;

(2) A student shall not exceed a total of one (1.0) unweighted FTE in a single school year, except as provided in subsection (4) of this section;

(3) A kindergarten student shall not exceed a total of one-half (0.5) unweighted enrollment in a single school year;

(4) A student attending a summer school or night school program shall not exceed a total of one-fourth (0.25) unweighted enrollment. Such student may be counted pursuant to both this subsection and subsection (2) of this section;

(5) A fractional enrollment count schedule shall be specified for any student enrolled less than one (1.0) FTE in a given school district or public charter school;

(6) FTE is based on the courses a student is enrolled in at the time of the official count, as specified in board rule, except that a student may be counted as enrolled if the term for which such student is enrolled begins after the time of the official count;

(7) Each school district or public charter school shall conduct an official count of enrolled students in the district or school on the first day of October, the first day of December, the first day of February, and the first day of April, or the previous school day if those dates do not fall on a school day; and

(8) A school district or public charter school may not count as enrolled any student who has unexcused absences totaling eleven (11) or more consecutive school days immediately prior to and including the official count date.

**History.**

I.C., § 33-1027, as added by 2019, ch. 328, § 5, p. 971.

**STATUTORY NOTES****Cross References.**

State board of education, § 33-101 et seq.

**Legislative Intent.**

Section 1 of S.L. 2019, ch. 328 provided: “Legislative Intent. (1) It is the intent of the Legislature that the enrollment counts determined pursuant to [Section 33-1027, Idaho Code](#), as enacted by Section 5 of this act, and the reports made pursuant to [Section 33-1028, Idaho Code](#), as enacted by Section 6 of this act, be used by the Legislature to evaluate and test a new student-based formula for public school funding consistent with the recommendations made in the 2018 final report issued by the Public School Funding Formula Committee.

“(2) It is further the intent of the Legislature that the reports submitted by school districts and public charter schools pursuant to [Section 33-1028, Idaho Code](#), be used by the Superintendent of Public Instruction in formulating a budget request pursuant to [Section 67-3502, Idaho Code](#).”

**Compiler’s Notes.**

The abbreviation enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 9 of S.L. 2019, ch. 328 declared an emergency and provided that section 5 of the act [this section] should be in full force and effect on and after passage and approval. Approved April 12, 2019.



**33-1028. Reports to state board — Report to legislature. [Null and void, effective July 1, 2022.]** — (1) By December 15 each year, each school district and public charter school shall report to the state board of education or to the board's designee the following information:

(a) Total student enrollment as of October 1 and December 1 in the year the report is made, or the previous school day if those dates do not fall on a school day;

(b) The number of at-risk students in the school district or at the public charter school as of October 1 and December 1 in the year the report is made, or the previous school day if those dates do not fall on a school day, and the number of at-risk students:

(i) By grade; and

(ii) Enrolled in an alternative school;

(c) The number of economically disadvantaged students in the school district or at the public charter school as of October 1 and December 1 in the year the report is made, or the previous school day if those dates do not fall on a school day, and the number of students who qualify as economically disadvantaged by grade;

(d) The number of English language learners in the school district or at the public charter school as of October 1 and December 1 in the year the report is made, or the previous school day if those dates do not fall on a school day, and the number of English language learners per grade;

(e) The number of gifted and talented students in the school district or at the public charter school as of October 1 and December 1 in the year the report is made, or the previous school day if those dates do not fall on a school day, and the number of gifted and talented students per grade; and

(f) The local salary schedule for the school district or public charter school in effect for the school year prior to the year the report is made.

(2) Beginning in 2020, a school district or public charter school shall include, in the report made pursuant to subsection (1) of this section, the

following information for the fiscal year prior to the fiscal year in which the report is made:

(a) The amounts received by the school district or public charter school for each statutory program line item distribution, other program line item distribution, and discretionary funds distribution specified in the state appropriation for public school support; and

(b) The actual expenditures by the school district or public charter school for each such line item distribution and discretionary funds distribution, unless information on the actual expenditures by district or school for a distribution is submitted to the state pursuant to another law or rule.

(3) By January 15 each year, the state board of education shall report to the senate and house of representatives education committees and the joint finance-appropriations committee on the information received pursuant to subsection (1) of this section. The state board's report shall include such information for each individual school district and public charter school and shall also summarize the information in aggregate statewide. The state board's report shall further include allocations made for each cell of the career ladder pursuant to [section 33-1004B, Idaho Code](#).

### **History.**

[I.C., § 33-1028](#), as added by 2019, ch. 328, § 6, p. 971.

## **STATUTORY NOTES**

### **Null and Void, effective July 1, 2022.**

This section is null and void, effective July 1, 2022, pursuant to S.L. 2019, ch. 328, § 8.

### **Cross References.**

State board of education, § 33-101 et seq.

### **Legislative Intent.**

Section 1 of S.L. 2019, ch. 328 provided: “Legislative Intent. (1) It is the intent of the Legislature that the enrollment counts determined pursuant to [Section 33-1027, Idaho Code](#), as enacted by Section 5 of this act, and the reports made pursuant to [Section 33-1028, Idaho Code](#), as enacted by

Section 6 of this act, be used by the Legislature to evaluate and test a new student-based formula for public school funding consistent with the recommendations made in the 2018 final report issued by the Public School Funding Formula Committee.

“(2) It is further the intent of the Legislature that the reports submitted by school districts and public charter schools pursuant to [Section 33-1028, Idaho Code](#), be used by the Superintendent of Public Instruction in formulating a budget request pursuant to [Section 67-3502, Idaho Code](#).”



## **CHAPTER 11**

### **SCHOOL BONDS**

#### **Section.**

33-1101. Existing issues unimpaired.

33-1102. Purposes for which bonds may be issued.

33-1103. Definitions — Bonds — Limitation on amount — Elections to authorize issuance.

33-1104 — 33-1106. [Repealed.]

33-1107. Plan and form of bonds — Amortization.

33-1108. Printing of bonds. [Repealed.]

33-1109. Signature and recording of bonds.

33-1110. Preferential right of state to purchase. [Repealed.]

33-1111. Sale of bonds.

33-1112. Payment, deposit and use of funds.

33-1113. Disposition of unexpended balance.

33-1114. Levy for liquidation of bonded indebtedness.

33-1115. District responsible for bonds.

33-1116. Refunding bonds. [Repealed.]

33-1117. Call or redemption of bonds — Notice.

33-1118. Compliance with statute is notice of exercise of option.

33-1119. Redemption of bonds held by state.

33-1120. Disposition of money remaining after redemption.

33-1121. Refunding bonds and advance refunding bonds.

33-1122. Application of other statutes. [Repealed.]

33-1123. Authorization. [Repealed.]

33-1124. Resolution not to be amended or repealed. [Repealed.]

33-1125. Application of bond proceeds — Limitations. [Repealed.]

**33-1101. Existing issues unimpaired.** — Bonds, heretofore issued on any plan, shall not be impaired or disturbed by this act, but until satisfied in full or refunded, bonds shall be entitled to all the support of the law existing at the time the issue was made and of such law as became subsequently available to the support of said issues.

Nor shall this act disturb or impair or invalidate any bond proceedings which have been completed to the point of bond election having been held by the time this act becomes effective.

**History.**

1963, ch. 13, § 98, p. 27.

**STATUTORY NOTES**

**Compiler's Notes.**

The words “this act” refer to S.L. 1963, Chapter 13, which is compiled throughout Title 33 of the Idaho Code.

The phrase “the time this act becomes effective” at the end of the section refers to the effective date of S.L. 1963, Chapter 13, which was July 1, 1963.

**JUDICIAL DECISIONS**

**Cited in:** *Gardner v. School Dist. No. 55*, 108 Idaho 434, 700 P.2d 56 (1985).

**33-1102. Purposes for which bonds may be issued.** — The purposes for which bonds may be issued shall be: To acquire, purchase or improve a school site or school sites; to build a schoolhouse or schoolhouses or other building or buildings; to demolish or remove school buildings; to add to, remodel or repair any existing building; to furnish and equip any building or buildings, including all lighting, heating, ventilation and sanitation facilities and appliances necessary to maintain and operate the buildings of the district; to purchase school buses and to acquire, develop or renovate school facilities to establish, create and develop renewable energy systems as described in section 33-604, Idaho Code. The provisions of section 33-906, Idaho Code, shall not apply to bonds or portions of bonds issued to acquire, develop or renovate school energy systems as authorized in section 33-604, Idaho Code, when the school district begins to sell thermal energy for revenue as authorized in section 33-605, Idaho Code.

#### **History.**

1963, ch. 13, § 99, p. 27; am. 2010, ch. 220, § 3, p. 493.

### **STATUTORY NOTES**

#### **Amendments.**

The 2010 amendment, by ch. 220, in the first sentence, added “and to acquire, develop or renovate school facilities to establish, create and develop renewable energy systems as described in [section 33-604, Idaho Code](#)”; and added the last sentence.

### **JUDICIAL DECISIONS**

#### **Decisions Under Prior Law Improvement of Sites.**

Issuance of bonds was not limited to mere purchase of school sites, but they could be issued for improvement of such sites. [King v. Independent Sch. Dist. No. 37, 46 Idaho 800, 272 P. 507 \(1928\)](#).



**33-1103. Definitions — Bonds — Limitation on amount — Elections to authorize issuance.** — (1) For the purposes of this chapter the following definitions shall have the meanings specified: “Market value for assessment purposes” means the amount of the last preceding equalized assessment of all taxable property and all property exempt from taxation pursuant to section 63-602G, Idaho Code, within the school district on the tax rolls completed and available as of the date of approval by the electorate in the school bond election. “Aggregate outstanding indebtedness” means the total sum of unredeemed outstanding bonds, minus all moneys in the bond interest and redemption fund or funds accumulated for the redemption of such outstanding bonds, and minus the sum of all taxes levied for the redemption of such bonds, with the exception of that portion of such tax levies required for the payment of interest on bonds, which taxes remain uncollected. “Issue,” “issued,” or “issuance” means a formal delivery of bonds to any purchaser thereof and payment therefor to the school district.

(2) The board of trustees of any school district, upon approval of a majority thereof, may submit to the qualified school district electors of the district the question as to whether the board shall be empowered to issue negotiable coupon bonds of the district in an amount and for a period of time to be named in the notice of election.

(3) An elementary school district which employs not less than six (6) teachers, or a school district operating an elementary school or schools, and a secondary school or schools, or issuing bonds for the acquisition of a secondary school or schools, may issue bonds in an amount not to exceed five percent (5%) of the market value for assessment purposes thereof, less the aggregate outstanding indebtedness; and no other school district shall issue bonds in an amount to exceed at any time two percent (2%) of the market value for assessment purposes thereof less the aggregate outstanding indebtedness. The market value for assessment purposes, the aggregate outstanding indebtedness and the unexhausted debt-incurring power of the district shall each be determined as of the date of approval by the electors in the school bond election.

(4) Notice of the bond election shall be given, the election shall be conducted and the returns thereof canvassed, and the qualifications of electors voting or offering to vote shall be, as provided in title 34, Idaho Code.

(5) The question shall be approved only if the percentage of votes cast at such election were cast in favor thereof is that which now, or may hereafter be, set by the constitution of the state of Idaho. Upon such approval of the issuance of bonds, the same may be issued at any time after the date of such election.

### **History.**

1963, ch. 13, § 100, p. 27; am. 1973, ch. 282, § 3, p. 597; am. 1974, ch. 4, § 1, p. 20; am. 1975, ch. 88, § 1, p. 181; am. 1979, ch. 114, § 1, p. 359; am. 1979, ch. 254, § 12, p. 661; am. 1980, ch. 205, § 1, p. 469; am. 1980, ch. 350, § 12, p. 887; am. 1996, ch. 322, § 27, p. 1029; am. 2001, ch. 336, § 1, p. 1194; am. 2007, ch. 358, § 1, p. 1057; am. 2008, ch. 400, § 6, p. 1100; am. 2009, ch. 341, § 48, p. 993; am. 2014, ch. 357, § 1, p. 886.

## **STATUTORY NOTES**

### **Cross References.**

Qualifications of school electors, § 33-405.

### **Amendments.**

This section was amended by two 1980 acts which appear to be compatible and have been compiled together.

The amendment by S.L. 1980, ch. 205, in the first sentence of the third paragraph, changed “per centum” to “percent” in both places it appears.

The amendment by S.L. 1980, ch. 350, in the first paragraph, substituted the words “Market value for assessment purposes” for “Assessed valuation”; in the third paragraph, substituted “five percentum (5%)” for “twenty-five per centum (25%)”, substituted “two percentum (2%)” for “ten percentum (10%)” and substituted the words “market value for assessment purposes” for “assessed valuation” in the three places it appears.

The 2007 amendment, by ch. 358, added the subsection designations; and in the first sentence in subsection (1), inserted “and all property exempt from taxation pursuant to [section 63-602G, Idaho Code](#).”

The 2008 amendment, by ch. 400, in the first sentence in subsection (1), inserted “and property exempt from taxation pursuant to [section 63-602KK, Idaho Code](#).”

The 2009 amendment, by ch. 341, substituted “title 34, Idaho Code” for “[sections 33-401 through 33-406, Idaho Code](#)” in subsection (4).

The 2014 amendment, by ch. 357, deleted “and property exempt from taxation pursuant to [section 63-602KK, Idaho Code](#)” preceding “within the school district” in the first sentence of subsection (1).

### **Compiler’s Notes.**

S.L. 2014, Chapter 357 became law without the signature of the governor.

### **Effective Dates.**

Section 4 of S.L. 1973, ch. 282 declared an emergency. Approved March 16, 1973.

Section 3 of S.L. 1974, ch. 4 declared an emergency. Approved February 14, 1974.

Section 2 of S.L. 1980, ch. 205 declared an emergency. Approved March 28, 1980.

Section 3 of S.L. 2001, ch. 336 declared an emergency. Approved April 4, 2001.

Section 2 of S.L. 2007, ch. 358 declared an emergency. Approved April 4, 2007.

Section 10 of S.L. 2008, ch. 400 provided that the act should take effect on and after January 1, 2009.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 8 of S.L. 2014, ch. 357 declared an emergency and made this section retroactive to January 1, 2014.

## JUDICIAL DECISIONS

**Cited in:** *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

### Decisions Under Prior Law

#### Analysis

Approval by electors.

Calling of election.

Liability of officers.

Limitation on amount.

Ministerial duty of clerk.

Notice of election.

#### **Approval by Electors.**

Portion of plan for reorganization of school districts which provided that the debt of the two districts, as formerly organized, be assumed by the new school district which resulted in making taxpayers of one of the old school districts proportionately liable for the bonded indebtedness of the other old school district was invalid where the voters were not limited to those persons possessing the qualifications of voting at a bond election and the plan was not carried by the required two-thirds majority required to approve a bonded indebtedness. *In re Joint Class A Sch. Dist. No. 370*, 77 Idaho 453, 295 P.2d 249 (1956).

#### **Calling of Election.**

Provisions of former section as to calling of election were mandatory if invoked before election, but after election provisions were construed as directory if the failure to fully comply did not affect the result of the election. *Keyes v. Class "B" School Dist. No. 421*, 74 Idaho 314, 261 P.2d 811 (1953).

Where chairman of board approved submission of bond issue to electorate but did not vote on motion, but two of the other three members of the board voted for submission of bond issue to electorate, there was a sufficient compliance requiring approval by majority of board. *Keyes v. Class "B" School Dist. No. 421*, 74 Idaho 314, 261 P.2d 811 (1953).

Calling of election for bond issue was valid where resolution provided for “advertising the same bond issue as was advertised in 1951” and there was attached to minutes of the meeting a copy of 1951 resolution calling for bond issue, which was full and complete. *Keyes v. Class “B” School Dist. No. 421*, 74 Idaho 314, 261 P.2d 811 (1953).

### **Liability of Officers.**

Any acts of negligence, misconduct, mistake, or omissions on part of officers of school district in paying out funds of district could not estop district from maintaining action to recover back money wrongfully taken. *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 4 P.2d 342 (1931).

### **Limitation on Amount.**

Common school districts could incur indebtedness during any year in amount which did not exceed its revenue and income for that year, and orders for warrants did not exceed ninety-five per cent of such income. *Boise City Nat’l Bank v. Independent Sch. Dist. No. 40*, 33 Idaho 26, 189 P. 47 (1920).

### **Ministerial Duty of Clerk.**

Where a bond issue was authorized prior to March 31, 1961, by a vote of electors held in a class A school district in an amount more than 10% but less than 15%, it was valid and the defendant clerk’s refusal to sign such bonds, being a ministerial duty only, was without legal justification. *Hammond v. Bingham*, 83 Idaho 314, 362 P.2d 1078 (1961).

### **Notice of Election.**

Notice of election covering bond issue in amount of “not exceeding \$275,000, bearing interest at a rate of not exceeding 4 per cent per annum \*” substantially complied with the former section governing the giving of notice. *Keyes v. Class “B” School Dist. No. 421*, 74 Idaho 314, 261 P.2d 811 (1953).

**33-1104. Period of debt limitations. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, comprising S.L. 1963, ch. 13, § 100A, p. 27, was repealed by S.L. 1965, ch. 121, § 1.

**33-1105, 33-1106. Approval by boards of county commissioners —  
When necessary — Appeal from order of county commissioners.  
[Repealed.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

These sections, comprising S.L. 1963, ch. 13, §§ 101 and 102, p. 27, were repealed by S.L. 1978, ch. 95, § 1.

**33-1107. Plan and form of bonds — Amortization.** — School district bonds shall be issued in denominations to be determined by the board of trustees.

No school district bonds shall be issued except upon an amortization plan. The first amortized principal payment shall mature and be payable not more than two (2) years from and after the date of the bonds, and the various annual maturities of any issue of bonds shall be in such principal amounts as will, together with accruing interest on all outstanding bonds of such issue, be met and paid by an equal annual tax levy during the term for which such bonds shall be issued and shall satisfy one (1) of the following:

(1) The annual tax levy in any year shall not exceed by more than ten percent (10%) the average annual tax levy if the principal and interest coming due on the bonds was repaid in equal annual amounts; or

(2) The annual tax levy in any year shall not exceed by more than ten percent (10%) the average annual tax levy if the principal and interest coming due on the bonds, together with the principal and interest coming due on all other outstanding bonds of the school district, was repaid in equal annual amounts; or

(3) The annual tax levy shall result in the repayment of principal and interest coming due on the bonds, or the bonds, together with the principal and interest coming due on all other outstanding bonds of the school district, more rapidly than an equal annual tax levy.

Whenever the amortization plan does not satisfy any of the foregoing alternatives, the board of trustees may adopt such amortization plan as it shall find will result to the benefit and advantage of the district, and the board of trustees may issue and sell such bonds with such annual maturities as it shall determine either prior to or after the fixing of the interest rates such bonds will bear, and in every such instance it shall be permissible for the board of trustees to issue such bonds in the annual maturities so determined upon and bearing the rate or rates of interest ascertained upon the sale of such bonds, and the plan and form thereof together with the



contract, if any, for the issue must be approved by the state superintendent of public instruction.

Subject to the provisions of this section, bonds may be issued as serial or term bonds.

Each bond shall bear interest from the date of issue, payable semiannually on the days of such months as shall be determined by the board of trustees, at such interest rate as said board may determine. Each bond of any issue shall be numbered in a consecutive series. Each issue of bonds shall mature and be paid in full not more than thirty (30) years from the date of the bonds.

No issue of school bonds shall at any time be sold at less than its aggregate par value.

### **History.**

1963, ch. 13, § 103, p. 27; am. 1963, ch. 263, § 1, p. 672; am. 1972, ch. 121, § 1, p. 240; am. 1988, ch. 135, § 1, p. 242; am. 2013, ch. 183, § 1, p. 437.

## **STATUTORY NOTES**

### **Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

The 2013 amendment, by ch. 183, rewrote the section to the extent that a detailed comparison is impracticable.

### **Effective Dates.**

Section 2 of S.L. 1963, ch. 263, provided that the act should take effect from and after July 1, 1963.

Section 3 of S.L. 1972, ch. 121, declared an emergency. Approved March 10, 1972.

## **JUDICIAL DECISIONS**

**Cited in:** [Muench v. Paine, 93 Idaho 473, 463 P.2d 939 \(1970\).](#)

### **[33-1108. Printing of bonds. \[Repealed.\]](#)**

Repealed by S.L. 2013, ch. 183, § 2, effective July 1, 2013.

#### **History.**

1963, ch. 13, § 104, p. 27; am. 1977, ch. 164, § 1, p. 425.

**33-1109. Signature and recording of bonds.** — Each bond shall be signed by the chairman of the board of trustees and countersigned by the clerk; and the seal of the district, if it has a seal, shall be attached.

All bonds shall be recorded by the treasurer of the district who shall keep record of the number, amount and status of the issue, together with the name of the successful purchaser therefor.

**History.**

1963, ch. 13, § 105, p. 27; am. 2013, ch. 183, § 3, p. 437.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 183, deleted the former second sentence in the first paragraph which read: “The attached coupons shall be signed by the clerk, personally or by facsimile” and substituted “purchaser” for “bidder” near the end of the second paragraph.

**33-1110. Preferential right of state to purchase. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section which comprised 1963, ch. 13, § 106, p. 27; am. 1969, ch. 446, § 2, p. 1326 was repealed by S.L. 1977, ch. 164, § 2.

**33-1111. Sale of bonds.** — School bonds may be sold at private sale, as provided in section 57-232, Idaho Code, after notice as hereinafter provided, or may be sold at public sale as hereinafter provided.

Notice of the intention to sell such bonds at public or private sale shall be published once in the name of the issuer in a newspaper of general circulation within the issuer's boundaries at least three (3) days prior to the time scheduled by the issuer for approving the sale of such bonds. Failure to comply with this requirement shall not invalidate the sale of the bonds, so long as the issuer has made a good faith effort to comply.

If the bonds are sold at public sale, the notice shall describe the issue of bonds; shall state that the board of trustees will receive sealed bids or electronic bids pursuant to the provisions of [section 57-233, Idaho Code](#), until a specified day and hour; and that said bids will be accepted or rejected at a regular or special meeting of the board at a time and place to be named in the notice. Said notice may require such deposits of forfeits as the board may deem necessary.

At the meeting held at the time and place named in the notice, the board of trustees shall open the bids, and may sell the same to whomever shall make the bid most advantageous to the school district, and the deposits of the unsuccessful bidders shall thereupon be returned to them. Should the successful bidder fail or refuse to tender payment of the amount required for the purchase of the issue within ten (10) days after tender to him of the executed bonds and a certified copy of the bond proceedings, his deposit shall be forfeited; and the board may in its judgment accept the bid next most advantageous, readvertise the issue as before, or sell the bonds at private sale.

The board of trustees may reject any or all bids, and sell the bonds at private sale when this is found to be in the best interest of the district.

### **History.**

1963, ch. 13, § 107, p. 27; am. 1969, ch. 466, § 3, p. 1326; am. 1977, ch. 164, § 3, p. 425; am. 1987, ch. 51, § 1, p. 84; am. 2001, ch. 336, § 2, p. 1194; am. 2013, ch. 183, § 4, p. 437.

## STATUTORY NOTES

### **Cross References.**

Publication of notices, § 60-109.

### **Amendments.**

The 2013 amendment, by ch. 183, in the first sentence of the second paragraph, deleted “If bonds are sold at private sale” from the beginning, inserted “public or” near the beginning, and deleted “private” preceding “sale of such bonds” at the end; deleted the former third paragraph, which read: “If the bonds are sold at public sale the board of trustees shall give notice of its intent to sell a bond issue”; in the present third paragraph, deleted the former first sentence, which read: “The notice shall be published once in a newspaper published in this state, at least one (1) week prior to the day bids are opened”, and, in the present first sentence, inserted “If the bonds are sold at public sale” and “or electronic bids pursuant to the provisions of [section 57-233, Idaho Code](#),” and substituted “accepted or rejected” for “opened”; and deleted the former last two paragraphs, which read: “In lieu of receiving sealed bids, the board of trustees may provide for the public sale of bonds by electronic bidding as provided in [section 57-233, Idaho Code](#).” and “No school bond shall at any time be sold at less than its par value.”

### **Effective Dates.**

Section 2 of S.L. 1987, ch. 51 declared an emergency. Approved March 16, 1987.

Section 3 of S.L. 2001, ch. 336 declared an emergency. Approved April 4, 2001.

**33-1112. Payment, deposit and use of funds.** — All moneys received from the sale of school bonds shall be paid immediately into the treasury of the district. The treasurer shall deposit such funds according to the provisions of the Public Depository Law, separate from any other funds of the school district. Said funds shall be immediately available for the purposes approved by the electors of the district. Proceeds of the sale of bonds may be used to pay architectural and engineering costs incurred in any construction authorized by electors; to pay legal and fiscal fees; to pay publishing, printing and election costs precedent to the issuance of bonds, including the printing of the bonds; or to reimburse any other funds of the district used for the above purposes.

**History.**

1963, ch. 13, § 108, p. 27.

**STATUTORY NOTES**

**Cross References.**

Public Depository Law, § 57-101 et seq.

**33-1113. Disposition of unexpended balance.** — Whenever there shall remain any balance of funds arising from the sale of bonds over and above the amount necessary to meet the requirements approved by the electors, such balance shall be placed in the bond interest and redemption fund, to be deposited or invested as provided by law for such fund, and applied only to the redemption of and payment of interest on, any bond issue of the district.

**History.**

1963, ch. 13, § 109, p. 27.



**33-1114. Levy for liquidation of bonded indebtedness.** — Whenever it shall appear that the board of trustees of any school district has failed to certify to the board of county commissioners the levy required in section 33-802, Idaho Code, said board of county commissioners shall, in addition to all other levies set by them, set levies sufficient to meet all accruing bond, bond interest and judgment obligations of the district maturing during the year when such levies shall be collected and paid.

**History.**

1963, ch. 13, § 110, p. 27; am. 1979, ch. 254, § 13, p. 661; am. 1996, ch. 322, § 28, p. 1029.

**STATUTORY NOTES**

**Effective Dates.**

Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

**33-1115. District responsible for bonds.** — The faith of each district is solemnly pledged for the payment of interest and redemption of principal on all bonds lawfully and validly issued.

**History.**

1963, ch. 13, § 111, p. 27.

**JUDICIAL DECISIONS**

**Cited in:** Muench v. Paine, 93 Idaho 473, 463 P.2d 939 (1970).

### **[33-1116. Refunding bonds. \[Repealed.\]](#)**

Repealed by S.L. 2013, ch. 183, § 5, effective July 1, 2013.

#### **History.**

1963, ch. 13, § 112, p. 27.

**33-1117. Call or redemption of bonds — Notice.** — The board of trustees of any school district having outstanding bonds which are redeemable or callable before final maturity, having sufficient money in its bond interest and redemption fund may redeem one (1) or more bonds, on any callable or redeemable date. Notice of redemption shall be given in the manner specified in the bonds or the resolution authorizing the bonds.

**History.**

1963, ch. 13, § 113, p. 27; am. 1969, ch. 466, § 4, p. 1326; am. 2013, ch. 183, § 6, p. 437.

**STATUTORY NOTES**

**Cross References.**

Publication requirements, § 60-109.

**Amendments.**

The 2013 amendment, by ch. 183, substituted the current last sentence for the former four sentences which detailed specific instructions for giving notice.

**33-1118. Compliance with statute is notice of exercise of option.** — A compliance with the provisions of section 33-1117[, Idaho Code,] shall be deemed sufficient notice to the owner or owners of such bonds that the school district has exercised its option to pay and redeem the bonds described, and interest thereon shall cease at the redeemable or callable date named in the notice.

**History.**

1963, ch. 13, § 114, p. 27.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**33-1119. Redemption of bonds held by state.** — Whenever the bonds of any school district have been purchased and are held by the department of finance and any said bond, or the interest on any said bond, becomes due and payable, the treasurer of the district shall remit to said department the amount of money required to pay and redeem the same. The said department, upon finding such payment in order, shall mark such bonds or interest coupons “canceled,” and return the same to the treasurer of the school district.

**History.**

1963, ch. 13, § 115, p. 27; am. 1969, ch. 466, § 5, p. 1326.

**STATUTORY NOTES**

**Cross References.**

Department of finance, § 67-2701 et seq.

**33-1120. Disposition of money remaining after redemption.** — Any money remaining in the bond interest and redemption fund of any school district after all of any issue of school bonds and all interest thereon have been paid, redeemed and canceled shall be held to apply against the redemption of any other bonds issued by the district or, such money may be credited to the school plant facilities reserve fund; if the district has not established such fund, such money may be transferred to the credit of the general fund of the district. Any transfer or credit authorized by this section shall be upon resolution of the board of trustees.

**History.**

1963, ch. 13, § 116, p. 27; am. 1996, ch. 341, § 1, p. 1146.

**33-1121. Refunding bonds and advance refunding bonds.** — The board of trustees of any school district may issue negotiable bonds for the purpose of refunding any outstanding bonded indebtedness of the district pursuant to the provisions of chapter 5, title 57, Idaho Code, subject to the following additional provisions:

(1) The provisions of section 33-1107, 33-1109, 33-1111, 33-1115, 33-1117, 33-1118 and 33-1120, Idaho Code, shall be applicable to refunding bonds.

(2) No election shall be required for the issuance of refunding bonds provided that the refunding bonds do not create an additional indebtedness. Additional indebtedness shall mean either that the term of the refunding bonds exceeds the term of the bonds to be refunded, except as provided in subsection (4) of this section; or that the total amount of principal and interest to be paid on the refunding bonds exceeds the total of principal and interest to be paid on the bonds to be refunded.

(3) In the case of refunding bonds issued in advance of the date of calling and redeeming such outstanding bonds, the net interest cost of the refunding bonds shall not exceed the net interest cost of the bonds to be refunded.

“Net interest cost” of a proposed issue of refunding bonds is defined as the total amount of interest to accrue on said refunding bonds from their date to their respective maturities, plus the total amount of premiums payable to the holders of said outstanding bonds as a condition to their redemption, less the amount of any premium above their par value at which said refunding bonds are being or have been sold. “Net interest cost” of an outstanding issue, or issues, to be refunded is defined as the total amount of interest which would accrue on said outstanding bonds from the date of the proposed refunding bonds to the respective maturity dates of said outstanding bonds to be refunded. In all cases the net interest cost shall be computed without regard to any option of redemption prior to the designated maturities.

(4) The maturity of the refunding bonds may not exceed the term of the outstanding bonds except in cases where an extension, not to exceed sixty



(60) days and in the same fiscal year shall be needed to enable the refunding bonds to comply with the requirements of the Idaho school bond guaranty act and the provisions of [section 33-5306, Idaho Code](#).

**History.**

1965, ch. 224, § 1, p. 512; am. 2005, ch. 392, § 1, p. 1317; am. 2013, ch. 183, § 7, p. 437.

**STATUTORY NOTES**

**Cross References.**

Idaho school bond guaranty act, § 33-5301 et seq.

**Amendments.**

The 2013 amendment, by ch. 183, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.**

Section 3 of S.L. 2005, ch. 392 declared an emergency. Approved April 14, 2005.

**[33-1122. Application of other statutes. \[Repealed.\]](#)**

Repealed by S.L. 2013, ch. 183, § 8, effective July 1, 2013.

**History.**

1965, ch. 224, § 2, p. 512.

**[33-1123. Authorization. \[Repealed.\]](#)**

Repealed by S.L. 2013, ch. 183, § 9, effective July 1, 2013.

**History.**

1965, ch. 224, § 3, p. 512; am. 2005, ch. 392, § 2, p. 1317.

**33-1124. Resolution not to be amended or repealed. [Repealed.]**

Repealed by S.L. 2013, ch. 183, § 10, effective July 1, 2013.

**History.**

1965, ch. 224, § 4, p. 512.

**33-1125. Application of bond proceeds — Limitations. [Repealed.]**

Repealed by S.L. 2013, ch. 183, § 11, effective July 1, 2013.

**History.**

1965, ch. 224, § 5, p. 512.



## **CHAPTER 12**

### **TEACHERS**

#### **Section.**

33-1201. Certificate required.

33-1201A. Idaho professional endorsement — Eligibility.

33-1201B. Grandfather rights for specific endorsements.

33-1202. Eligibility for certificate.

33-1203. Accredited teacher training requirements.

33-1204. Validity, duration, renewal, and lapse of certificates.

33-1205. Certificate records and fees.

33-1206. Validity of existing certificates. [Repealed.]

33-1207. Endorsement and registration of certificates.

33-1207A. Teacher preparation.

33-1208. Revocation, suspension, denial, or place reasonable conditions on certificate — Grounds.

33-1208A. Reporting requirements and immunity.

33-1209. Proceedings to revoke, suspend, deny or place reasonable conditions on a certificate — Letters of reprimand — Complaint — Subpoena power — Hearing.

33-1210. Information on past job performance.

33-1211. Privileged communication or publication.

33-1212. School counselors.

33-1212A. College and career advisors and student mentors.

33-1213. Technology proficiency. [Null and void.]

33-1214, 33-1215. Release from contract — Termination of employment or salary reduction. [Repealed.]

33-1216. Sick and other leave.

33-1217. Accrued unused sick leave — Transfer.

33-1217A. Providing for the use of sick leave. [Repealed.]

33-1218. Sick leave in excess of statutory minimum amounts — Proof of illness.

33-1219. Minimum salary schedule. [Repealed.]

33-1220. In-service training — Halting service increments.

33-1221. Sales of services or merchandise limited.

33-1222. Freedom from abuse.

33-1223. Exemption from jury duty. [Repealed.]

33-1224. Powers and duties of teachers.

33-1225. Threats of violence — Limitation on liability.

33-1226, 33-1227. School employees — Tuberculosis examinations. [Repealed.]

33-1228. Severance allowance at retirement.

33-1229 — 33-1250. [Reserved.]

33-1251. Professional standards — Title of act.

33-1252. Professional standards commission — Members — Appointment — Terms.

33-1253. Chairman and vice-chairman — Secretary — Rule making.

33-1254. Professional codes and standards — Adoption — Publication.

33-1255 — 33-1257. Hearings — Administrative and legal remedies. [Repealed.]

33-1258. Recommendations to improve professional standard.

33-1259 — 33-1270. [Reserved.]

33-1271. School districts — Professional employees — Negotiation agreements.

33-1271A. Existing agreements. [Null and void.]



33-1272. Definitions.

33-1273. School districts — Professional employees — Negotiations.

33-1273A. Negotiations in open session. [Repealed.]

33-1274. Appointment of mediators — Compensation.

33-1274A. Procedures upon agreement. [Null and void.]

33-1275. Terms of agreements.

33-1276. Intent of act.

33-1277, 33-1278. [Reserved.]

33-1279. Released time for service on state committees and commission.

33-1280. American Indian languages teaching authorization.

**33-1201. Certificate required.** — Every person who is employed to serve in any elementary or secondary school in the capacity of teacher, supervisor, administrator, education specialist, school nurse or school librarian shall be required to have and to hold a certificate issued under authority of the state board of education, valid for the service being rendered; except that the state board of education may authorize endorsement for use in Idaho, for not more than five (5) years, certificates valid in other states when the qualifications therefor are not lower than those required for an Idaho certificate.

No certificate shall be required of a student attending any teacher-training institution, who shall serve as a practice teacher in a classroom under the supervision of a certificated teacher, and who is jointly assigned by such teacher-training institution and the governing board of a district or a public institution to perform practice teaching in a non-salaried status. Those students attending a teacher-training institution of another state and who serve as a non-salaried practice teacher in an Idaho school district shall be registered by that school district.

A student, while serving in a practicum, internship or student teaching position under the supervision of a person certificated pursuant to this section, shall be accorded the same liability insurance coverage by the school district being served as that accorded such certificated person in the same district, and shall comply with all rules and regulations of the school district or public institution while serving in such a capacity.

### **History.**

1963, ch. 13, § 143, p. 27; am. 1975, ch. 45, § 1, p. 84; am. 1985, ch. 107, § 12, p. 191; am. 1990, ch. 35, § 1, p. 53.

## **STATUTORY NOTES**

### **Cross References.**

Professional personnel, § 33-513.

## **JUDICIAL DECISIONS**

**Cited in:** [Zattiero v. Homedale Sch. Dist. No. 370](#), 137 Idaho 568, 51 P.3d 382 (2002).

## **RESEARCH REFERENCES**

**Idaho Law Review.** — Regulation of Teacher Certification in Idaho: Proceedings Before Idaho's Professional Standards Commission Concerning the Denial of an Application for or Action Against a Teaching Certificate, John E. Rumel. 53 Idaho L. Rev. 527 (2017).

**A.L.R.** — Use of illegal drugs as ground for dismissal of teacher, or denial or cancelation of teacher's certificate. [47 A.L.R.3d 754](#).

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. [78 A.L.R.3d 19](#).

**33-1201A. Idaho professional endorsement — Eligibility.** — (1) Any instructional staff employee or any pupil service staff employee will receive mentoring as outlined in such employee's individualized professional learning plan during the initial three (3) years of holding such certificate. Upon holding a certificate for three (3) years, any such instructional staff or pupil service staff employee may apply for an Idaho professional endorsement. Upon holding a professional endorsement for five (5) years or more, any such instructional staff or pupil service staff employee may apply for an Idaho advanced professional endorsement.

(2) To be eligible for an Idaho professional endorsement, the instructional staff or pupil service staff employee must:

- (a) Have held a certificate for at least three (3) years, or have completed a state board of education-approved interim certificate of three (3) years or longer;
- (b) Show they met the professional compensation rung performance criteria for two (2) of the three (3) previous years or the third year;
- (c) Have a written recommendation from the employing school district; and
- (d) Have an annual individualized professional learning plan developed in conjunction with the employee's school district supervisor.

Instructional staff employees may provide additional evidence demonstrating effective teaching that may be considered in exceptional cases for purposes of determining proficiency and student achievement in the event required standards for professional endorsement are not met. Pupil service staff employees may provide additional evidence demonstrating effective student achievement or success that may be considered in exceptional cases for purposes of determining proficiency and student achievement or success in the event required standards for professional endorsement are not met.

(3) To be eligible for an Idaho advanced professional endorsement, the instructional staff or pupil service staff employee must:

(a) Have held a renewable certificate for at least eight (8) years or more, or have completed a state board of education-approved interim certificate of three (3) years or longer and held a renewable certificate for five (5) years or more;

(b) Show they met the professional compensation rung performance criteria for four (4) of the five (5) previous years or the third, fourth, and fifth year;

(c) During three (3) of the previous five (5) years, have served in an additional building or district leadership role in an Idaho public school, including but not limited to:

(i) Instructional specialist or instructional coach;

(ii) Mentor;

(iii) Curriculum or assessment committee member;

(iv) Team or committee leadership position;

(v) Data coach; or

(vi) Other leadership positions identified by the school district;

(d) Have a written recommendation from the employing school district;

(e) Have an annual individualized professional learning plan developed in conjunction with the employee's supervisor and a self-evaluation; and

(f)(i) Effective July 1, 2020, through June 30, 2021, show they have met the advanced professional compensation rung performance criteria for three (3) of the five (5) previous years or the fifth year;

(ii) Effective July 1, 2021, through June 30, 2022, show they have met the advanced professional compensation rung performance criteria for three (3) of the five (5) previous years or the fourth and fifth year; or

(iii) Effective July 1, 2022, show they have met the advanced professional compensation rung performance criteria for three (3) of the five (5) previous years.

Instructional staff employees may provide additional evidence demonstrating effective teaching that may be considered in exceptional cases for purposes of determining proficiency and student achievement in

the event required standards for the advanced professional endorsement are not met. Pupil service staff employees may provide additional evidence demonstrating effective student achievement or success that may be considered in exceptional cases for purposes of determining proficiency and student achievement or success in the event required standards for the advanced professional endorsement are not met.

(4) Instructional staff and pupil service staff shall be eligible for the professional endorsement if they:

- (a) Have a written recommendation from the employing school district;
- (b) Have worked in a certificated position in a compact-member state pursuant to [section 33-4101, Idaho Code](#); and
- (c) Would have been eligible to work in a certificated position in an Idaho public school based on that certification for three (3) to eight (8) years.

(5) Instructional staff and pupil service staff shall be eligible for the advanced professional endorsement if they:

- (a) Have a written recommendation from the employing school district;
- (b) Have worked in a certificated position in a compact-member state pursuant to [section 33-4101, Idaho Code](#); and
- (c) Would have been eligible to work in a certificated position in an Idaho public school based on that certification for nine (9) years or more.

(6) The state board of education shall promulgate rules implementing the provisions of this section.

(7) For the purposes of this section:

- (a) “Certificate” means an Idaho instructional certificate, pupil service staff certificate, or out-of-state educator certificate that meets the requirements for reciprocity under rules promulgated by the state board of education;
- (b) In conjunction with the Idaho evaluation framework, “individualized professional learning plan” means an individualized professional development plan based on the Idaho framework for teaching evaluation and includes, at a minimum, identified interventions based on the individual’s strengths and areas of needed growth, how the individual

will set student achievement and growth goals, areas of identified professional development and mentoring that target continuous improvement in professional areas, future student achievement, and school building or district culture;

(c) “Instructional staff” means those involved in the direct instruction of a student or group of students and who hold a certificate issued under [section 33-1201, Idaho Code](#);

(d) “Pupil service staff” means those who provide services to students but are not involved in direct instruction of those students and who hold a certificate issued under [section 33-1201, Idaho Code](#); and

(e) “School district” means a school district or a public charter school.

### **History.**

[I.C., § 33-1201A](#), as added by 2015, ch. 229, § 12, p. 701; am. 2016, ch. 245, § 9, p. 642; am. 2020, ch. 270, § 5, p. 782.

## **STATUTORY NOTES**

### **Amendments.**

The 2016 amendment, by ch. 245, in subsection (1), in the introductory paragraph, substituted “or any pupil service staff” for “who is issued a certificate under [section 33-1201, Idaho Code](#), on or after July 1, 2015” in the first sentence, inserted “or pupil service staff” twice in the last sentence, and added the last sentence in the last paragraph; rewrote subsection (2), which formerly read: “An instructional staff employee who has held a certificate for three (3) or more years prior to the effective date of this act shall automatically obtain an Idaho professional endorsement under this section”; and added subsection (5).

The 2020 amendment, by ch. 270, rewrote the section to the extent that a detailed comparison is impracticable, adding an Idaho advanced professional endorsement.

**33-1201B. Grandfather rights for specific endorsements.** — (1) Individuals who held a specific endorsement issued or recognized by the state board of education or state department of education prior to July 1, 2020, which specific endorsement is no longer issued or recognized by the state board of education or state department of education as of July 1, 2020, shall hold the specific endorsement and be recognized as holding the specific endorsement.

(2) Individuals who hold a specific endorsement issued or recognized by the state board of education or state department of education as of July 1, 2020, shall continue to hold the specific endorsement and be recognized as holding the specific endorsement even if, in the future, the state board of education or state department of education ceases to issue or recognize such specific endorsements.

**History.**

I.C., § 33-1201B, as added by 2020, ch. 150, § 1, p. 450.

**STATUTORY NOTES**

**Cross References.**

State board of education, § 33-101 et seq.

State department of education, § 33-125 et seq.



**33-1202. Eligibility for certificate.** — Each applicant for a certificate must:

1. Have attained the age of eighteen (18) years; 2. Have completed specific minimum requirements in college training as specified in rules of the state board of education; 3. Be free from contagious disease; but if at any time there is probable cause to believe that any such employee of the district is so afflicted, the board shall cause examination to be made by a licensed physician, and may exclude the employee from service without loss of pay pending determination whether so afflicted.

4. Have on file with the state department of education the results of a criminal history check pursuant to [section 33-130, Idaho Code](#). If an applicant is found to have been convicted of any of the felony crimes enumerated in [section 33-1208, Idaho Code](#), a certificate shall not be issued to the applicant.

The state board of education may refuse to issue or authorize a certificate to any applicant for such reason as would have constituted grounds for revoking a certificate.

**History.**

1963, ch. 13, § 144, p. 27; am. 1992, ch. 98, § 1, p. 313; am. 1996, ch. 375, § 3, p. 1273.

**STATUTORY NOTES**

**Cross References.**

Grounds for revocation of certificate, § 33-1208.

**33-1203. Accredited teacher training requirements.** — Except in the limited fields of trades and industries, and specialists certificates of school librarians and school nurses, the state board shall not authorize the issuance of any standard certificate premised upon less than four (4) years of accredited college training, including such professional training as the state board may require; but in emergencies, which must be declared, the state board may authorize the issuance of provisional certificates based on not less than two (2) years of college training.

**History.**

1963, ch. 13, § 145, p. 27.

**33-1204. Validity, duration, renewal, and lapse of certificates.** — (1) The state board of education shall by rule provide for the validity, duration, renewal, and lapse of certificates. In addition, rules promulgated by the state board of education shall set forth criteria for renewal of administrator certificates, which shall include a requirement that administrator certificate holders must complete a course consisting of a minimum of three (3) semester credits in the statewide framework for teachers' evaluations, such course shall include a laboratory component.

(2) If the holder of a certificate who has undergone a criminal history check pursuant to district policy as provided in [section 33-512\(15\), Idaho Code](#), is found to have been convicted of any felony crime enumerated in [section 33-1208, Idaho Code](#), the certificate shall be revoked or suspended as provided in this chapter.

(3) The state board of education may by rule require professional development credits as a condition of certificate renewal, provided that such rule must recognize providing instruction in a professional development course or in a course at an institution of higher education as an option to complete required credits.

### **History.**

1963, ch. 13, § 146, p. 27; am. 1984, ch. 70, § 1, p. 132; am. 1988, ch. 118, § 1, p. 217; am. 1996, ch. 375, § 4, p. 1273; am. 1998, ch. 88, § 6, p. 298; am. 2006, ch. 244, § 7, p. 740; am. 2015, ch. 229, § 13, p. 701; am. 2019, ch. 262, § 1, p. 773.

## **STATUTORY NOTES**

### **Cross References.**

State board of education, § 33-101 et seq.

### **Amendments.**

The 2006 amendment, by ch. 244, updated the subsection reference in the last paragraph.

The 2015 amendment, by ch. 229, added the subsection designations to the existing provisions of the section and added the last sentence in subsection (1).

The 2019 amendment, by ch. 262, added subsection (3).

**33-1205. Certificate records and fees.** — (1) The state board of education shall cause to be maintained a record of all certificates issued, showing names, dates of issue and renewal, and if revoked, the date thereof and the reason therefor. A nonrefundable fee shall accompany each application for a prekindergarten through grade twelve (12) certificate, alternate certificate, change in certificate or replacement.

(2) Certificate and related fees shall be as specified by rule of the state board of education.

(3) The fees shall be used by the state department of education for payment of the expenses of the professional standards commission in performing its duties to sustain certification, program approvals, ethics reviews and standards reviews.

### **History.**

1963, ch. 13, § 147, p. 27; am. 1969, ch. 259, § 1, p. 798; am. 1972, ch. 239, § 1, p. 626; am. 1974, ch. 79, § 1, p. 1166; am. 1981, ch. 44, § 1, p. 66; am. 1983, ch. 80, § 1, p. 167; am. 1987, ch. 255, § 1, p. 518; am. 2003, ch. 143, § 1, p. 416; am. 2015, ch. 23, § 1, p. 28.

## **STATUTORY NOTES**

### **Cross References.**

Professional standards commission, § 33-1252 et seq.

Register of qualified teachers, § 33-115.

### **Amendments.**

The 2015 amendment, by ch. 23, rewrote the section to the extent that a detailed comparison is impracticable, authorizing the state board of education to set certification related fees.

### **Effective Dates.**

Section 2 of S.L. 1987, ch. 255 declared an emergency. Approved April 1, 1987.

Section 2 of S.L. 2003, ch. 143 declared an emergency. Approved March 27, 2003.

**33-1206. Validity of existing certificates. [Repealed.]**

Repealed by S.L. 2017, ch. 35, § 1, effective July 1, 2017.

**History.**

1963, ch. 13, § 148, p. 27.

**33-1207. Endorsement and registration of certificates.** — The board of trustees of each school district shall cause the certificates of each holder thereof to be endorsed (a) prior to beginning service for the first time with the district, or (b) in the first year after a new or renewed certificate is issued, showing the date of service thereunder; and shall cause to be maintained a continuing record of certificates, by style and number, of each certificated employee of the district.

**History.**

1963, ch. 13, § 149, p. 27; am. 1971, ch. 15, § 1, p. 28.



**33-1207A. Teacher preparation.** — (1) Higher Education Institutions. The state board shall review teacher preparation programs at the institutions of higher education under its supervision and shall assure that the course offerings and graduation requirements are consistent with the state board-approved, research-based “Idaho Comprehensive Literacy Plan.” To ensure compliance with this requirement, the board may allocate funds, subject to appropriation, to the higher education institutions that have teacher preparation programs.

The higher education institutions shall be responsible for the preservice assessment measures for all kindergarten through grade 12 teacher preparation programs. The assessment must include a demonstration of teaching skills and knowledge congruent with current research on best reading practices. The assessment may consist of multiple measures, in alignment with best practices, for the demonstration of these skills. Each institution shall report annually to the state board of education the number of preservice teachers who have passed the assessment. The state board of education shall then compile the statewide results and report to the legislature and the governor.

(2) Nonpublic Teacher Preparation Programs.

(a) The state board shall grant teaching certificates to graduates of all already board-approved nonpublic teacher preparation programs that require their graduates to satisfy the following:

- (i) Hold a bachelor’s degree from an accredited four (4) year institution;
- (ii) Submit to a criminal history check as described in [section 33-130, Idaho Code](#);
- (iii) Pass the required content training in the area or areas in which the graduate seeks to be endorsed. The content training must be in substantive alignment with knowledge or equivalent standards set forth in the initial standards for teacher certification, if any; and
- (iv) Pass pedagogical training in substantive alignment with knowledge or equivalent standards set forth in the core standards of the

initial standards for teacher certification, if any.

(b) Teaching certificates granted pursuant to this subsection shall be equivalent to certificates granted to graduates of teacher preparation programs at public higher education institutions. Interim certificates shall be made available to graduates of programs without a student teaching or clinical component and standard certificates subsequently shall be made available upon satisfaction of state board of education mentoring requirements and other state statutory requirements pertaining to all teachers. All performance requirements shall be considered satisfied by completion of state board mentoring requirements. Reviews of nonpublic teacher preparation programs shall be limited to verification of the criteria set forth in this subsection.

(3) For all Idaho teachers working on interim certificates, alternate routes or coming from out of state, completion of a state-approved reading instruction course shall be a onetime requirement for full certification.

(4) The board of trustees of every school district shall include, in its plan for in-service training, coursework covering reading skills development, including diagnostic tools to review and adjust instruction continuously, and the ability to identify students who need special help in reading. The district plan for in-service training in reading skills shall be submitted to the state department of education for review and approval, in a format specified by the department.

(5) A board-approved nontraditional educator preparation program that has a contract with a local education agency or consortium thereof to recruit, select, train, and retain teachers to teach in public schools that struggle to recruit and retain teachers may obtain funding from the state department of education, subject to appropriation or other available funds, provided that the program shall match no less than one hundred percent (100%) of any cost to the state for implementation. The board-approved program must have a documented history of recruiting, training, and retaining high-quality teachers who achieve above-average academic growth from students in Idaho and other states. The nontraditional educator preparation program may apply to the state department of education for available funding at the time one (1) or more teachers recruited by the program enters into an employment contract with a local education agency

(LEA). The amount of funding per teacher provided by the department to the program shall not exceed twenty-five percent (25%) of each teacher's annual salary for each year the program is providing services in support of the teacher. Such funding is limited to two (2) academic years per teacher. In order for the program to obtain funding from the department:

(a) The program and the LEA shall provide to the department verification of each teacher's fulfillment of the annual employment contract; and

(b) The program and the LEA shall provide verification that the LEA is providing funding to the program for recruiting and training each teacher in an amount equal to at least ten percent (10%) of the amount the department is providing to the program.

### **History.**

**I.C., § 33-1207A**, as added by 1999, ch. 362, § 1, p. 957; am. 2000, ch. 269, § 1, p. 769; am. 2002, ch. 71, § 1, p. 156; am. 2010, ch. 309, § 1, p. 828; am. 2017, ch. 78, § 1, p. 218; am. 2019, ch. 259, § 1, p. 768; am. 2020, ch. 325, § 1, p. 940.

## **STATUTORY NOTES**

### **Cross References.**

State board of education, § 33-101 et seq.

### **Amendments.**

The 2010 amendment, by ch. 309, rewrote the section, placing responsibility for teacher preparation programs in the institutions of higher education and providing for requirements relating to full certification of teachers from kindergarten through grade 12.

The 2017 amendment, by ch. 78, inserted the present third sentence in the second paragraph of subsection (1).

The 2019 amendment, by ch. 259, added subsection (4).

The 2020 amendment, by ch. 325, added subsection (2) and redesignated the remaining subsections accordingly.

### **Effective Dates.**

Section 2 of S.L. 2000, ch. 269 declared an emergency. Approved April 12, 2000.

Section 2 of S.L. 2020, ch. 325 declared an emergency. Approved March 26, 2020.

**33-1208. Revocation, suspension, denial, or place reasonable conditions on certificate — Grounds.** — (1) The professional standards commission may deny, revoke, suspend, or place reasonable conditions on any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, upon any of the following grounds:

- (a) Gross neglect of duty;
- (b) Incompetency;
- (c) Breach of the teaching contract;
- (d) Making any material statement of fact in the application for a certificate that the applicant knows to be false;
- (e) Revocation, suspension, denial, or surrender of a certificate in another state for any reason constituting grounds for revocation in this state;
- (f) Conviction, finding of guilt, withheld judgment, or suspended sentence in this or any other state of a crime that is deemed relevant in accordance with [section 67-9411\(1\), Idaho Code](#);
- (g) Conviction, finding of guilt, withheld judgment, or suspended sentence in this state or any other state for the delivery, manufacture, or production of controlled substances or simulated controlled substances as those terms are defined in [section 37-2701, Idaho Code](#);
- (h) A guilty plea or a finding of guilt, notwithstanding the form of the judgment or withheld judgment, in this or any other state of the crime of involuntary manslaughter, section 18-4006(2) or (3), Idaho Code;
- (i) Any disqualification that would have been sufficient grounds for refusing to issue or authorize a certificate, if the disqualification existed or had been known at the time of its issuance or authorization;
- (j) Willful violation of any professional code or standard of ethics or conduct adopted by the state board of education;
- (k) The kidnapping of a child, [section 18-4503, Idaho Code](#);

(l) Conviction, finding of guilt, withheld judgment, or suspended sentence in this state or any other state of any crime that is deemed relevant in accordance with [section 67-9411\(1\), Idaho Code](#), the commission of which renders the certificated person unfit to teach or otherwise perform the duties of the certificated person's position.

(2) The professional standards commission shall permanently revoke any certificate issued or authorized under the provisions of [section 33-1201, Idaho Code](#), and shall deny the application for issuance of a certificate of a person who pleads guilty to or is found guilty of, notwithstanding the form of the judgment or withheld judgment, any of the following felony offenses:

(a) Aggravated assault, [section 18-905, Idaho Code](#), or assault with intent to commit a serious felony, [section 18-909, Idaho Code](#).

(b) Aggravated battery, [section 18-907, Idaho Code](#), or battery with intent to commit a serious felony, [section 18-911, Idaho Code](#).

(c) The injury or death of a child, [section 18-1501, Idaho Code](#).

(d) The sexual abuse of a child under sixteen (16) years of age, [section 18-1506, Idaho Code](#).

(e) The ritualized abuse of a child under eighteen (18) years of age, [section 18-1506A, Idaho Code](#).

(f) The sexual exploitation of a child, [section 18-1507, Idaho Code](#).

(g) Lewd conduct with a child under the age of sixteen (16) years, [section 18-1508, Idaho Code](#).

(h) The sexual battery of a minor child sixteen (16) or seventeen (17) years of age, [section 18-1508A, Idaho Code](#).

(i) The sale or barter of a child for adoption or other purposes, [section 18-1511, Idaho Code](#).

(j) Murder, [section 18-4003, Idaho Code](#), or voluntary manslaughter, [section 18-4006\(1\), Idaho Code](#).

(k) Kidnapping, [section 18-4502, Idaho Code](#).

(l) Interstate trafficking in prostitution, [section 18-5601, Idaho Code](#).

(m) Utilizing a person under eighteen (18) years of age for prostitution, [section 18-5610, Idaho Code](#).

(n) Rape, [section 18-6101, Idaho Code](#).

The general classes of felonies listed in this subsection shall include equivalent laws of federal or other state jurisdictions. For the purpose of this subsection, “child” means a minor or juvenile as defined by the applicable state or federal law.

(3) The professional standards commission may investigate and follow the procedures set forth in [section 33-1209, Idaho Code](#), for any allegation of inappropriate conduct as defined in this section by a holder of a certificate whether or not the holder has surrendered his certificate without a hearing or failed to renew his certificate. In those cases where the holder of a certificate has surrendered or failed to renew his certificate and it was found that inappropriate conduct occurred, the commission shall record such findings in the permanent record of the individual and shall deny the issuance of a teaching certificate.

(4) Any person whose certificate may be or has been revoked, suspended or denied under the provisions of this section shall be afforded a hearing according to the provisions of [section 33-1209, Idaho Code](#). Any person holding a certificate on or before July 1, 2020, who would not be eligible for a certificate by virtue of the provisions of this section shall be afforded a hearing according to the provisions of [section 33-1209, Idaho Code](#), prior to revocation or denial of the individual’s certificate. Upon a showing of just and reasonable cause, the hearing panel shall have authority to grant an exception to the provisions of this section for such person.

(5) The professional standards commission may deny the issuance of a certificate for any reason that would be a ground for revocation or suspension.

### **History.**

1963, ch. 13, § 150, p. 27; am. 1969, ch. 258, § 9, p. 794; am. 1978, ch. 180, § 1, p. 411; am. 1984, ch. 150, § 1, p. 353; am. 1987, ch. 229, § 1, p. 485; am. 1992, ch. 223, § 1, p. 672; am. 1993, ch. 111, § 1, p. 281; am. 2004, ch. 222, § 1, p. 662; am. 2011, ch. 246, § 1, p. 662; am. 2012, ch.

269, § 7, p. 751; am. 2016, ch. 296, § 15, p. 828; am. 2020, ch. 175, § 4, p. 500; am. 2020, ch. 264, § 1, p. 763.

## STATUTORY NOTES

### Cross References.

Professional standards commission, § 33-1252 et seq.

### Amendments.

The 2011 amendment, by ch. 246, throughout the section, substituted “professional standards commission” or “commission” for “state board of education,” or similar language.

The 2012 amendment, by ch. 269, in subsection (2), deleted former paragraph (g), which read, “Possession of photographic representations of sexual conduct involving a child, [section 18-1507A, Idaho Code](#)” and redesignated the subsequent paragraphs accordingly.

The 2016 amendment, by ch. 296, deleted “or 18-6108” following “18-6101” in paragraph (2)(n).

This section was amended by two 2020 acts which appear to be compatible and have been compiled together.

The 2020 amendment, by ch. 175, in subsection (1), substituted “that is deemed relevant in accordance with [section 67-9411\(1\), Idaho Code](#)” for “involving moral turpitude” at the end of paragraph (f) and substituted “any crime that is deemed relevant in accordance with [section 67-9411\(1\), Idaho Code](#)” for “any felony” near the middle of paragraph (l).

The 2020 amendment, by ch. 264, changed the style of the existing subsection designators; in subsection (2), rewrote paragraph (l), which formerly read: “The importation or exportation of a juvenile for immoral purposes, [section 18-5601, Idaho Code](#)” and substituted “Utilizing” for “The abduction of” at the beginning of paragraph (m); and added the last two sentences in subsection (4).

### Effective Dates.

Section 10 of S. L. 1969, ch. 258 provided that this act should be in full force and effect on and after July 1, 1969.



## **JUDICIAL DECISIONS**

**Cited in:** *Kolp v. Board of Trustees*, 102 Idaho 320, 629 P.2d 1153 (1981).

## **RESEARCH REFERENCES**

**Idaho Law Review.** — Regulation of Teacher Certification in Idaho: Proceedings Before Idaho's Professional Standards Commission Concerning the Denial of an Application for or Action Against a Teaching Certificate, John E. Rumel. 53 Idaho L. Rev. 527 (2017).

**A.L.R.** — Use of illegal drugs as ground for dismissal of teacher, or denial or cancelation of teacher's certificate. 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 A.L.R.3d 19.

**33-1208A. Reporting requirements and immunity.** — The board of trustees of a school district, through its designee, shall, within ten (10) days of the date the employment is severed, report to the chief officer of teacher certification the circumstances and the name of any educator who is dismissed, resigns or is otherwise severed from employment for reasons that could constitute grounds for revocation, suspension or denial of a certificate.

Any person providing a report under the provisions of this section shall have immunity from any liability, civil or criminal, that may otherwise be incurred or imposed. Any such person shall have the same immunity with respect to participation in any administrative or judicial proceeding resulting from such report. Any person who reports in bad faith or with malice shall not be protected by the provisions of this section.

**History.**

I.C., § 33-1208A, as added by 1992, ch. 223, § 2, p. 672.

**RESEARCH REFERENCES**

**Idaho Law Review.** — Regulation of Teacher Certification in Idaho: Proceedings Before Idaho's Professional Standards Commission Concerning the Denial of an Application for or Action Against a Teaching Certificate, John E. Rumel. 53 Idaho L. Rev. 527 (2017).

**33-1209. Proceedings to revoke, suspend, deny or place reasonable conditions on a certificate — Letters of reprimand — Complaint — Subpoena power — Hearing.** — (1) The professional standards commission may conduct investigations on any signed allegation of unethical conduct of any teacher brought by:

- (a) An individual with a substantial interest in the matter, except a student in an Idaho public school; or
- (b) A local board of trustees.

The allegation shall state the specific ground or grounds for the allegation of unethical conduct that could lead to a possible revocation, suspension, placing reasonable conditions on the certificate, or issuance of a letter of reprimand. Upon receipt of a written and signed allegation of unethical conduct, the chief certification officer, in conjunction with the attorney general and the professional standards commission investigator, shall conduct a review of the allegation using established guidelines to determine whether to remand the issue to the school district to be resolved locally or to open an investigation and forward the case to the professional standards commission. Within fourteen (14) days of the decision to forward the case, the chief certification officer shall notify the complainant and the teacher, in writing, that an investigation will be conducted and the teacher shall be afforded an opportunity to respond to the allegation verbally and in writing prior to the issuance of the complaint. The executive committee of the professional standards commission shall review the circumstances of the forwarded case at one (1) of the two (2) next regularly scheduled meetings, and determine whether probable cause exists to warrant the filing of a complaint and the requesting of a hearing.

(2) Proceedings to revoke or suspend any certificate issued under [section 33-1201, Idaho Code](#), or to issue a letter of reprimand or place reasonable conditions on the certificate shall be commenced by a written complaint against the holder thereof. Such complaint shall be made by the chief certification officer stating the ground or grounds for issuing a letter of reprimand, placing reasonable conditions on the certificate, or for revocation or suspension and proposing that a letter of reprimand be issued,

reasonable conditions be placed on the certificate, or the certificate be revoked or suspended. A copy of the complaint shall be served upon the certificate holder, either by personal service or by certified mail, within thirty (30) days of determination by the executive committee or such other time agreed to by the teacher and the chief certification officer.

(3) Not more than thirty (30) days after the date of service of any complaint, the person complained against may request, in writing, a hearing upon the complaint. Any such request shall be made and addressed to the state superintendent of public instruction; and if no request for hearing is made, the grounds for suspension, revocation, placing reasonable conditions on the certificate, or issuing a letter of reprimand stated in the complaint shall be deemed admitted. Upon a request for hearing, the chief certification officer shall give notice, in writing, to the person requesting the hearing, which notice shall state the time and place of the hearing and which shall occur not more than ninety (90) days from the request for hearing or such other time agreed to by the teacher and the chief certification officer. The time of such hearing shall not be less than five (5) days from the date of notice thereof. Any such hearing shall be informal and shall conform with chapter 52, title 67, Idaho Code. The hearing will be held within the school district in which any teacher complained of shall teach, or at such other place deemed most convenient for all parties.

(4) Any such hearing shall be conducted by three (3) or more panel members appointed by the chairman of the professional standards commission, a majority of whom shall hold a position of employment the same as the person complained against. One (1) of the panel members shall serve as the panel chair. The panel chair shall be selected by the chairman of the professional standards commission from a list of former members of the professional standards commission who shall be instructed in conducting administrative hearings. No commission member who participated in the probable cause determination process in a given case shall serve on the hearing panel. All hearings shall be held with the object of ascertaining the truth. Any person complained against may appear in person and may be represented by legal counsel, and may produce, examine and cross-examine witnesses, and, if he chooses to do so, may submit for the consideration of the hearing panel a statement, in writing, in lieu of oral

testimony, but any such statement shall be under oath and the affiant shall be subject to cross-examination.

(5) The state superintendent of public instruction, as authorized by the state board of education, has the power to issue subpoenas and compel the attendance of witnesses and compel the production of pertinent papers, books, documents, records, accounts and testimony. The state board or its authorized representative may, if a witness refuses to attend or testify or to produce any papers required by such subpoena, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that a due notice has been given of the time and place of attendance of the witnesses, or the production of the papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board, or its representative, or has refused to answer questions propounded to him in the course of the proceedings, and ask for an order of the court compelling the witness to attend and testify and produce the papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in the order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced the papers before the board or its representative. A copy of the order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued by the board and regularly served, the court shall thereupon order that the witness appear before the board at the time and place fixed in the order and testify or produce the required papers. Upon failure to obey the order, the witness shall be dealt with for contempt of court. The subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the district courts of this state.

(6) Within twenty-one (21) days of the conclusion of any hearing dealing with the revocation, suspension, denial of a certificate, placing reasonable conditions on the certificate, or issuing a letter of reprimand, the hearing panel shall submit to the chief certification officer, to the person complained against and to the chief administrative officer of the public school employing the certificate holder, if any, a concise statement of the proceedings, a summary of the testimony, and any documentary evidence offered, together with the findings of fact and a decision. The hearing panel

may determine to suspend or revoke the certificate, or the panel may order that reasonable conditions be placed on the certificate or a letter of reprimand be sent to the certificate holder, or if there are not sufficient grounds, the allegation against the certificate holder is dismissed and is so recorded.

(7) Within three (3) days of issuance, the hearing panel's decision shall be made a permanent part of the record of the certificate holder. Should the final decision be to place reasonable conditions upon the certificate holder or a suspension or revocation of the teaching certificate, the professional standards commission must notify the employing public school of the hearing panel's decision and to provide notice that such may negatively impact upon the employment status of the certificated employee.

(8) The final decision of the hearing panel shall be subject to judicial review in accordance with the provisions of chapter 52, title 67, Idaho Code, in the district court of the county in which the holder of a revoked certificate has been last employed as a teacher.

(9) Whenever any certificate has been revoked, suspended or has had reasonable conditions placed upon it, or an application has been denied, the professional standards commission may, upon a clear showing that the cause constituting grounds for the listed actions no longer exists, issue a valid certificate. Provided however, that no certificate shall be issued to any person who has been convicted of any crime listed in subsection (2) of [section 33-1208, Idaho Code](#).

(10) For any person certified in another state and applying for certification in Idaho, and for any person previously certified in this state who is applying for certification in the event their certification has lapsed or is seeking renewal of a current certification, the chief certification officer shall deny an application for a new certificate or for a renewal of a certificate, regardless of the jurisdiction where such certificate was issued, if there are any unsatisfied conditions on such current or previously issued certificate or if there is any form of pending investigation by a state agency concerning the applicant's teaching license or certificate. Provided however, the chief certification officer shall not automatically deny the application if such person authorized in writing that the chief certification officer and the professional standards commission shall have full access to the

investigative files concerning the conditions on, or investigation concerning, such certificate in Idaho or any other state or province. Upon review of the information authorized for release by the applicant, the chief certification officer shall either grant or deny such application or, upon denial and upon written request made by the applicant within thirty (30) days of such denial, shall afford the applicant with the procedures set forth in subsections (3) through (9) of this section. If the applicant does not execute the written authorization discussed herein, reapplication may be made once all investigations have been completed and all conditions have been satisfied, resulting in a clear certificate from the issuing state or province.

(11) For the purposes of this section, the term “teacher” shall include any individual required to hold a certificate pursuant to [section 33-1201, Idaho Code](#).

### **History.**

[I.C., § 33-1209](#), as added by 1989, ch. 122, § 2, p. 269; am. 1992, ch. 159, § 1, p. 514; am. 1993, ch. 216, § 16, p. 587; am. 1995, ch. 235, § 1, p. 794; am. 2004, ch. 221, § 1, p. 659; am. 2011, ch. 246, § 2, p. 662; am. 2012, ch. 210, § 1, p. 565; am. 2020, ch. 264, § 3, p. 763.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

Professional standards commission, § 33-1252 et seq.

State superintendent of public instruction, § 67-1501 et seq.

Writ of review, § 7-201 et seq.

### **Prior Laws.**

Former § 33-1209, which comprised 1963, ch. 13, § 151, p. 27; am. 1984, ch. 150, § 2, p. 353, was repealed by S.L. 1989, ch. 122, § 1.

### **Amendments.**

The 2011 amendment, by ch. 246, in the undesignated paragraph following paragraph (1)(b), added the second and third sentences and, in the

last sentence, inserted “forwarded” and “at one (1) of the two (2) next regularly scheduled meetings”; in the last sentence in subsection (2), added “within thirty (30) days of determination by the executive committee or such other time agreed to by the teacher and the chief certification officer”; in the third sentence in subsection (3), added “and which shall occur not more than ninety (90) days from the request for hearing or such other time agreed to by the teacher and the chief certification officer”; in the first sentence in subsection (6), substituted “Within twenty-one (21) days of the conclusion” for “At the conclusion” and inserted “and to the person complained against”; rewrote subsection (7), which formerly read: “The hearing panel’s decision shall be given to the person complained against and a copy of the panel’s decision shall be made a permanent part of the record of the certificate holder”; in subsection (8), substituted “hearing panel” for “professional standards commission”; and added subsections (10) and (11).

The 2012 amendment, by ch. 210, in subsection (b), inserted “the allegation of unethical conduct that could lead to a possible” in the first sentence and substituted “unethical conduct” for “misconduct” near the beginning of the second sentence; inserted “and to the chief administrative officer of the public school employing the certificate holder, if any”; in the first sentence in subsection (6); and added the second sentence in subsection (7).

The 2020 amendment, by ch. 264, corrected a reference at the end of subsection (9) in light of the 2020 amendment of § 33-1208.

## **JUDICIAL DECISIONS**

### **Failure to Review Record.**

Where the transcript of the state board of education (SBE) meeting indicated that some of the SBE members had not reviewed all of the record submitted to SBE by the panel as required under this section, this failure to review violated the teacher’s statutory rights. *Macrae v. Smith*, 126 Idaho 788, 890 P.2d 739 (1995).

## **RESEARCH REFERENCES**



**Idaho Law Review.** — Regulation of Teacher Certification in Idaho: Proceedings Before Idaho's Professional Standards Commission Concerning the Denial of an Application for or Action Against a Teaching Certificate, John E. Rumel. 53 Idaho L. Rev. 527 (2017).

**33-1210. Information on past job performance.** — (1) As used in this section:

(a) “Applicant” means an applicant for employment in a certificated or noncertificated position who is currently or was previously employed by a school district.

(b) “Employer” means a school district employer.

(2) Before hiring an applicant, a school district shall request the applicant to sign a statement:

(a) Authorizing the applicant’s current and past employers, including employers outside of the state of Idaho, to release to the hiring school district all information relating to the job performance and/or job related conduct, if any, of the applicant and making available to the hiring school district copies of all documents in the previous employer’s personnel files established pursuant to sections 33-517 or 33-518, Idaho Code, or investigative or other files, regardless of whether or not the employee has received notice of the existence of such documentation due to a voluntary separation from employment or the employee’s refusal to sign such documents, relating to the job performance by the applicant. Upon separation of employment, all documents from any other file, including an investigative file, shall be moved into the personnel file. The requirement to submit investigative files to the personnel file shall not be construed to be a waiver of the attorney client privilege. Names of any student, fellow employee or complainant, other than the employee’s administrative supervisor or administrative author shall be redacted from investigative file documents prior to placement in the personnel file. The former employee shall be provided a copy of the documents and written notice of the inclusion of the information in the personnel file to the former employee’s last known address. The former employee shall be permitted the opportunity to file a rebuttal to the new documents placed into the personnel file. If an ongoing personnel investigation was taking place, the contents of the district’s investigative file shall be forwarded to the professional standards commission when the district submits the report required pursuant to [section 33-1208A, Idaho Code](#).

(b) Documentation related to the job performance or job related conduct of any employee/applicant is defined as and may be limited by the producing district to include: all annual evaluations, letters of reprimand, letters of direction, letters of commendation or award, disciplinary actions and documentation of disciplinary investigations, recommendations for probation, notices of probation, notices of removal from probation, recommendations for termination or nonrenewal, notices of termination or nonrenewal, notices from the professional standards commission of Idaho or any other such similar state agency of action taken against an individual's certificate and any rebuttal documentation filed by the employee relative to any of the above documents. Names of any student or fellow employee complainant, other than the employee's administrative evaluator or administrative author of communication to the employee, shall be redacted from such provided documentation.

(c) Releasing the applicant's current and past employers, and employees acting on behalf of that employer, from any liability for providing information described in paragraph (a) of this subsection, as provided in subsection (4) of this section.

(3) Before hiring an applicant, a school district shall request in writing, electronic or otherwise, the applicant's current and past public school employers, including out-of-state employers, to provide the information described in subsection (2)(a) of this section, if any. The request shall include a copy of the statement signed by the applicant under subsection (2) of this section.

(4) Not later than twenty (20) business days after receiving a request under subsection (3) of this section, a school district within Idaho shall provide the information requested and make available to the requesting school district copies of all documents in the applicant's personnel record relating to job performance. The school district, or an employee acting on behalf of the school district, who in good faith discloses information under this section either in writing, printed material, electronic material or orally is immune from civil liability for the disclosure. An employer is presumed to be acting in good faith at the time of the disclosure under this section unless the evidence establishes one (1) or more of the following: (a) that the employer knew the information disclosed was false or misleading; (b) that the employer disclosed the information with reckless disregard for the truth;

or (c) that the disclosure was specifically prohibited by a state or federal statute.

(5) A hiring district shall request from the office of the superintendent of public instruction verification of certification status, any past or pending violations of the professional code of ethics, any detail as to any prior or pending conditions placed upon a certificate holder's certificate, any prior or pending revocation, suspension or the existence of any prior letters of reprimand and information relating to job performance as established by the provisions of subsection (11) of this section, if any, for applicants for certificated employment.

(6) A school district shall not hire an applicant who does not sign the statement described in subsection (2) of this section.

(7) School districts may employ applicants on a noncontracted provisional basis pursuant to the provisions of this section. Once the prior employer personnel performance materials have arrived for an individual provisionally hired, the district must review the documents within thirty (30) days of receipt. A standard certificated contract shall automatically be issued at the end of the thirty (30) day review period unless, prior to the expiration of the thirty (30) day period, the board articulates in writing the specific information received pursuant to subsection (2)(a) of this section, which justifies the decision not to issue a standard contract. The reason articulated in this decision must derive only from the documents received in the personnel file and cannot be based upon any event that has occurred during the status as a noncontracted provisional certified professional employee. Prior to issuing a standard certificated contract or prior to the decision not to issue a standard certificated contract, or upon the expiration of the thirty (30) day period, an individual employed as a noncontracted provisional certificated professional employee shall be provided with the same compensation and benefits as if the employee had been employed on a standard certificated contract. When requests are sent to out-of-state employers under subsection (3) of this section, an applicant who has signed the statement described in subsection (2) of this section shall not be prevented from gaining employment in Idaho public schools if the laws or policies of that other state prevent documents from being made available to Idaho school districts or if the out-of-state school district fails or refuses to cooperate with the request.

(a) If no documentation is going to be forthcoming from an out-of-state employer, the Idaho district may initially employ the applicant on a standard contract and not utilize the conditional basis employment.

(b) For new employees with no prior public school work experience or for applicants whose out-of-state former employers will not release documentation pursuant to this statute, the district board shall develop a policy to confirm prior work experience and check references.

(8) Information received pursuant to this section shall be used by a school district only for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she has applied. Except as otherwise provided by law, a board member or employee of a school district shall not disclose the information to any person, other than the applicant, who is not directly involved in the process of evaluating the applicant's qualifications for employment. A person who violates the provisions of this subsection may be civilly liable for damages caused by such violation.

(9) Beginning September 1, 2011, the board or an official of a school district shall not enter into any resignation agreement, severance agreement, or any other contract or agreement that has the effect of suppressing information about negative job performance by a present or former employee or of expunging information about that performance or unethical conduct from any documents in the previous employer's personnel, investigative or other files relating to job performance by the applicant. Any provision of a contract or agreement that is contrary to this subsection is void and unenforceable. This subsection does not restrict the expungement from a personnel file of information about alleged verbal or physical abuse or sexual misconduct that has not been substantiated.

(10) This section does not prevent a school district from requesting or requiring an applicant to provide information other than that described in this section.

(11) By September 1, 2012, the state board of education has the authority to and shall adopt rules defining job standards performance and "verbal abuse," "physical abuse," "sexual misconduct" and "unethical conduct" as defined in the code of ethics for Idaho professional educators for application to all certificated and noncertificated employees. The definitions of job

standards performance, verbal and physical abuse and sexual misconduct adopted by the state board of education must include the requirement that the school district has made a determination that there is sufficient information to conclude that the abuse or unethical conduct occurred and that the abuse or unethical conduct resulted in the employee's leaving his or her position at the school district.

### **History.**

**I.C., § 33-1210**, as added by 2011, ch. 246, § 3, p. 662; am. 2012, ch. 210, § 2, p. 565.

## **STATUTORY NOTES**

### **Cross References.**

Professional standards commission, § 33-1252 et seq.

State superintendent of public instruction, § 67-1501 et seq.

### **Prior Laws.**

Former § 33-1210, Suspension of certification, which comprised S.L. 1963, ch. 13, § 152, p. 27, was repealed by S.L. 1978, ch. 180, § 2.

### **Amendments.**

The 2012 amendment, by ch. 210, in subsection (2), rewrote paragraph (a), added paragraph (b), and redesignated former paragraph (b) as paragraph (c); inserted "public school" preceding "employers" in the first sentence in subsection (3); inserted "any detail as to any prior or pending conditions placed upon a certificate holder's certificate, any prior or pending revocation, suspension or the existence of any prior letters of reprimand" in subsection (5); rewrote subsection (7), adding paragraphs (a) and (b); substituted "any resignation agreement" for "collective bargaining agreement, individual employment contract, resignation agreement" in the first sentence in subsection (9); in subsection (11), substituted "September 1, 2011" for "September 12, 2012" at the beginning and inserted "and 'unethical conduct' as defined in the code of ethics for Idaho professional educators"; and substituted "unethical conduct" for "misconduct" three times in the section.

**Compiler's Notes.**

For code of ethics for Idaho professional educators, referred to in subsections (5) and (11), see **IDAPA 08.02.02.076** at *<https://adminrules.idaho.gov/rules/current/08/080202.pdf>*=ro.

**33-1211. Privileged communication or publication.** — Any publication or communication made by any member of the state board of education, or by any person delegated by the said state board to hold or conduct any hearing, or by any certification officer of the state board of education, in the proper discharge of any official duty imposed under section 33-1208 or 33-1209, Idaho Code, shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

**History.**

1963, ch. 13, § 153, p. 27; am. 1990, ch. 213, § 29, p. 480; am. 2011, ch. 246, § 4, p. 662; am. 2015, ch. 141, § 64, p. 379.

**STATUTORY NOTES**

**Amendments.**

The 2011 amendment, by ch. 246, deleted “or 33-1210” following “33-1209.”

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9”.

**Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should become effective July 1, 1993 and that §§ 1, 2, 46 and 47 should become effective on July 1, 1990.

**RESEARCH REFERENCES**

**A.L.R.** — Actionability of statements imputing inefficiency or lack of qualification to public school teacher. [40 A.L.R.3d 490](#).



**33-1212. School counselors.** — (1) In recognition of the diverse and complicated demands upon students, their families and the public school system, the legislature finds that counseling offered at Idaho public schools should be flexible and responsive. For purposes of counselor services, a counselor shall be defined as an individual who meets the requirements of an approved program of graduate study in school guidance and counseling from a college or university approved by the Idaho state board of education and who meets the requirements of rules adopted by the board, or an individual licensed as provided by chapter 32, title 54, Idaho Code, as a certified social worker and who meets the requirements of the state board of education.

(2) School counselors spend most of their time in direct service to and contact with students. School counselors' duties are focused on the overall delivery of guidance, individual student planning and responsive services. A small amount of their time is devoted to indirect services called system support.

(3) The state board of education shall adopt rules to implement the provisions of this section, and shall specifically provide that certified social workers meet the requirement for school counselors. A local school district may request a waiver from the state board of education of the counselor/counseling requirements, provided that data is submitted to and annually approved by the state department of education to substantiate that the intent of the board's rules in these areas is being met by an alternative program model.

### **History.**

**I.C., § 33-1212**, as added by 1994, ch. 443, § 1, p. 1424; am. 1998, ch. 88, § 7, p. 298; am. 2015, ch. 314, § 2, p. 1226.

## **STATUTORY NOTES**

### **Amendments.**

The 2015 amendment, by ch. 314, deleted "Elementary" from the beginning of the section heading; designated the existing provisions of the

section as subsections (1) and (3); added subsection (2); substituted “legislature finds that counseling offered at Idaho public schools” for “legislature finds that the counseling offered at the elementary school level” at the end of the first sentence in subsection (1); and deleted “elementary” preceding “counselor services” near the end of the first sentence in subsection (3).

**Compiler’s Notes.**

Former § 33-1212 was amended and redesignated as § 33-515 by § 10 of S.L. 1984, ch. 286.

**33-1212A. College and career advisors and student mentors.** — (1) College and career advising and student mentoring is an essential component of students' educational experience. Such advising and mentoring provide all students with an early opportunity to identify academic strengths, areas in need of improvement and areas of interest for the purpose of making informed choices and setting postsecondary education and career goals. The focus of college and career planning is to help students acquire the knowledge and skills necessary to achieve academic success and to be college and career ready upon high school graduation.

(2) School districts and charter schools may employ noncertificated staff to serve in the role of college and career advisors and student mentors. Appropriate alternative forms of advising and mentoring shall be research-based and may include the following: (a) High contact programs such as:

(i) Near peer or college student mentors; and (ii) Counselor, teacher or paraprofessional as advisor or mentor; (b) Collaborative programs such as:

(i) Student ambassadors; and

(ii) Cooperative agreements with other school districts or postsecondary institutions; and (c) Virtual coach or mentor programs.

(3) School districts and charter schools shall provide professional development in the area of college and career advising to all staff serving in the role of student mentors or advisors. All individuals providing services in the role of a college and career advisor must have a basic level of training or experience in the area of advising or mentoring to provide such services.

(4) School districts and charter schools shall develop a plan to deliver college and career advising to students in grades 8 through 12.

(5) School districts and charter schools shall notify parents or guardians of all students in grades 8 through 12 of the availability of college and career advising provided by the district and how to access such services.

(6) School districts and charter schools shall report annually on the effectiveness of their college and career advising programs as part of their annual continuous improvement plan. Reports shall include: (a) The type of program being implemented; and (b) Student outcomes indicating the effectiveness of the program.

(7) The state board of education shall promulgate rules to specify those student outcomes that can be used to satisfy the reporting requirement, as well as other rules necessary for the administration of this section.

### **History.**

**I.C., § 33-1212A**, as added by 2015, ch. 314, § 3, p. 1226; am. 2016, ch. 43, § 1, p. 93.

## **STATUTORY NOTES**

### **Amendments.**

The 2016 amendment, by ch. 43, substituted “College and career” for “Academic and college or career” in the section heading and first sentence in subsection (1); substituted “The focus of college” for “The focus of academic” in the last sentence in subsection (1); substituted “college and career” for “academic and college or career” in the first sentence of the introductory paragraph of subsection (2); in subsection (3), rewrote the first sentence, which formerly read: “School districts shall provide professional development in the area of college and career advising to certificated counselors and instructional staff as well as noncertificated staff serving in the role of student mentors or advisors” and substituted “college and career advisor” for “an academic and college or career advisor” in the second sentence; added present subsection (4) and redesignated the subsequent subsections accordingly; in present subsection (5), inserted “and charter schools” and substituted “college and career” for “college or career”; rewrote present subsection (6), which formerly read: “School districts shall report annually on the effectiveness of their academic and college or career advising programs in a form and time established by the state board of education through the promulgation of rules”; and added subsection (7).

### **Compiler’s Notes.**

Former § 33-1212A was amended and redesignated as § 33-516 pursuant to S.L. 1984, ch. 286, § 11.

**33-1213. Technology proficiency. [Null and void.]**

Null and void, pursuant to S.L. 2004, ch. 372, § 2, effective July 1, 2009.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-1213, which comprised 1963, ch. 13, § 155, p. 27; am. 1973, ch. 126, § 4, p. 238; am. 1978, ch. 340, § 1, p. 874; am. 1983, ch. 83, § 3, p. 169, was repealed by S.L. 1984, ch. 286, § 12.

**Compiler's Notes.**

This section was comprised **I.C.. § 33-1213**, as added by 2004, ch. 372, § 1, p. 1113.

**33-1214, 33-1215. Release from contract — Termination of employment or salary reduction. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1963, ch. 13, §§ 156, 157, p. 27; am. 1973, ch. 126, §§ 5, 6, p. 238; am. 1978, ch. 340, § 2, p. 874; am. 1983, ch. 83, § 4, p. 169, were repealed by S.L. 1984, ch. 286, § 12.

**33-1216. Sick and other leave.** — (a) At the beginning of each new employment year and thereafter as necessary during the employment year, each noncertificated employee of any school district, including charter districts, who regularly works twenty (20) hours or more per week or certificated employee who works half time or more per week for a school district, including charter districts, shall be entitled to sick leave with full pay of one (1) day, as projected for the employment year for each month of service in which they work a majority portion of that month, subject to the limitations provided by this chapter. Sick leave for noncertificated employees shall be calculated proportionate to the average hours worked per day. Sick leave for certificated employees shall be calculated by the day, or percentage thereof, as defined in their individual employment contracts. The local board of trustees shall not provide compensation for unused sick leave. This shall not prohibit the local board of trustees from establishing a policy providing retirement severance pay.

(b) The board of trustees may require proof of illness adequate to protect the district against malingering and false claims of illness. Any accumulated sick leave earned prior to July 1, 1976, shall be used before the use of any accumulated sick leave earned subsequent to July 1, 1976.

Each local board of trustees may establish a policy governing leave for certificated and noncertificated employees in the case of illness or death of members of the families of such employees, for professional conferences and workshops, and for such other purposes as the board may determine.

(c) Each local board of trustees may establish a policy governing leave for certificated and noncertificated employees in the case of absence during a period for which the employee is paid by worker's compensation. In addition the board may supplement the worker's compensation payment by an amount not to exceed an amount which when combined with the worker's compensation payment would be equal to the amount the employee would have been paid if he had not been injured. Supplementation may come from accrued vacation leave, compensatory time or sick leave time as may be provided in the policy of the district. Time for which a person is paid worker's compensation shall not be



allowed as straight sick leave which would result in duplicate compensation.

(d) The board of trustees of any school district, including any specially chartered district, may also grant a leave of absence to any certificated employee of such district for service to a professional educational organization of which such certificated employee is a member and has been elected to hold the office of president therein, such leave to be for a period not exceeding one (1) year. During the period of any such leave of absence the said certificated employee shall receive the same compensation and receive or accrue such other rights and benefits that he would have been entitled to or have received or accrued had he been present and working for the school district, and he shall remain an active member of the public employee retirement system of Idaho; provided that such professional educational organization shall first pay to the said school district an amount equal to any and all compensation, contributions to the public employee retirement system of Idaho and any other amounts paid to or accrued in the name of said employee during such period.

### **History.**

1963, ch. 13, § 158, p. 27; am. 1972, ch. 120, § 1, p. 238; am. 1973, ch. 37, § 1, p. 71; am. 1974, ch. 112, § 1, p. 1278; am. 1976, ch. 226, § 1, p. 810; am. 1977, ch. 138, § 1, p. 298; am. 1979, ch. 129, § 1, p. 399; am. 2004, ch. 253, § 1, p. 724; am. 2005, ch. 377, § 1, p. 1216.

## **STATUTORY NOTES**

### **Cross References.**

Public employee retirement system, § 59-1301 et seq.

### **Effective Dates.**

Section 2 of S.L. 1972, ch. 120 provided the act should take effect on and after July 1, 1972.

## **JUDICIAL DECISIONS**

### **Sick Leave.**

Subsection (a) of this section grants sick leave benefits to all school district employees, including part-time school bus drivers. *Porter v. Bd. of Trs.*, 141 Idaho 11, 105 P.3d 671 (2004) (see 2005 amendment).

## **RESEARCH REFERENCES**

**A.L.R.** — Mandatory maternity leave rules or policies for public school teachers as constituting violation of *equal protection clause of Fourteenth Amendment to Federal Constitution*. 17 A.L.R. Fed. 768.

Who is eligible employee under § 101(2) of family and medical leave act (29 U.S.C.A. § 2611(2)). 166 A.L.R. Fed. 569.

**33-1217. Accrued unused sick leave — Transfer.** — Unused sick leave shall accrue from year to year as long as an employee remains continuously in the service of the same school district, including charter districts. Termination of employment in any district shall terminate sick leave rights, both current and accrued, except when such employee is employed by a public education entity or by a state educational agency, as such terms are defined in section 67-5302, Idaho Code, during the school year immediately following the year of termination or within three (3) school years immediately following the year of termination if termination of employment is due to a reduction in force; and the accrued sick leave shall be secured for, and credited to, the employee by the public education entity or state educational agency thereafter employing such employee. Any state educational agency employee or public education entity employee who obtains employment with a school district during the current or subsequent school year following termination shall be credited any unused sick leave accrued during state employment. Whenever new school districts are formed by the consolidation or by the division of existing districts, the accrued sick leave of school district employees who continue in service in the new district or districts created by such consolidation or division shall have such accrued sick leave secured for and credited to them in such newly created district or districts.

### **History.**

1963, ch. 13, § 158A, p. 27; am. 1965, ch. 148, § 1, p. 287; am. 1971, ch. 33, § 1, p. 77; am. 1974, ch. 112, § 2, p. 1278; am. 2012, ch. 105, § 1, p. 281; am. 2014, ch. 238, § 1, p. 600; am. 2016, ch. 199, § 3, p. 556.

## **STATUTORY NOTES**

### **Amendments.**

The 2012 amendment, by ch. 105, inserted “or within three (3) school years immediately following the year of termination if termination of employment is due to a reduction in force” in the second sentence.

The 2014 amendment, by ch. 238, inserted the present third sentence.

The 2016 amendment, by ch. 199, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.**

Section 2 of S.L. 1965, ch. 148 provided that this act should take effect from and after July 1, 1965.

Section 3 of S.L. 1971, ch. 33 provided that this act should be in full force and effect on and after July 1, 1971.

**JUDICIAL DECISIONS**

**Cited in:** [Porter v. Bd. of Trs., 141 Idaho 11, 105 P.3d 671 \(2004\).](#)

**33-1217A. Providing for the use of sick leave. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 33-1217A, as added by 1971, ch. 33, § 2, p. 77, was repealed by S.L. 1974, ch. 112, § 3.

**33-1218. Sick leave in excess of statutory minimum amounts — Proof of illness.** — The board of trustees may fix and establish for the district a period of annual sick leave and accumulation of sick leave in excess of the amounts provided herein, in sections 33-1216 and 33-1217, Idaho Code, not discriminatory between employees, and as in its discretion may appear necessary, and may require proof of illness in accordance with section 33-1216, Idaho Code.

**History.**

1963, ch. 13, § 158B, p. 27; am. 1974, ch. 112, § 4, p. 1278; am. 2011, ch. 49, § 1, p. 114.

**STATUTORY NOTES**

**Amendments.**

The 2011 amendment, by ch. 49, delete the former second paragraph, which read: “The state board of education may provide uniform regulations for proof of illness, including forms for submission of proof, and when so provided, its regulations shall supersede the regulations of the district in this regard.”

**33-1219. Minimum salary schedule. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1963, ch. 13, § 159, p. 27, was repealed by S.L. 1980, ch. 33, § 1.

**33-1220. In-service training — Halting service increments.** — The board of trustees of any school district may establish for the district, uniform requirements for in-service training of certificated personnel; and the board may upon notice halt teaching service increments otherwise due any such employee upon neglect or failure to fulfill such requirement, until said requirement shall have been met.

**History.**

1963, ch. 13, § 160, p. 27.



**33-1221. Sales of services or merchandise limited.** — No person employed by any public school district shall, either as a principal or as an agent, sell or offer to sell to pupils attending school in the district, or to a parent or guardian of any such pupil, any services or merchandise to be used, or intended to be used, in the schools in connection with activities or studies therein, except under such rules and regulations which shall be adopted by the board of trustees of the district employing such person.

Nothing herein shall limit a board of trustees from purchasing books, supplies or other equipment which may be sold to pupils attending any school in the district.

**History.**

1963, ch. 13, § 161, p. 27.

**STATUTORY NOTES**

**Cross References.**

Contracts of trustees with district prohibited, § 33-507.

**33-1222. Freedom from abuse.** — Certificated employees of every school district shall be free from abuse by parents or other adults, as provided in section 18-916, Idaho Code.

**History.**

1963, ch. 13, § 162, p. 27; am. 1981, ch. 139, § 1, p. 242.

**33-1223. Exemption from jury duty. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1963, ch. 13, § 163, p. 27, was repealed by S.L. 1972, ch. 12, § 1.

**33-1224. Powers and duties of teachers.** — In the absence of any statute or rule or regulation of the board of trustees, any teacher employed by a school district shall have the right to direct how and when each pupil shall attend to his appropriate duties, and the manner in which a pupil shall demean himself while in attendance at the school. It is the duty of a teacher to carry out the rules and regulations of the board of trustees in controlling and maintaining discipline, and a teacher shall have the power to adopt any reasonable rule or regulation to control and maintain discipline in, and otherwise govern, the classroom, not inconsistent with any statute or rule or regulation of the board of trustees.

**History.**

1963, ch. 13, § 164, p. 27.

**STATUTORY NOTES**

**Cross References.**

Alcohol, effects of, instruction, § 33-1605.

American flag, instruction in proper use, § 33-1602.

Constitution, instruction in, § 33-1602.

English language, instruction in, § 33-1601.

Health and physical fitness, instruction, § 33-1605.

Narcotics, effects of, instruction, § 33-1605.

National anthem, instruction, § 33-1602.

Pledge of allegiance, instruction, § 33-1602.

Sectarian instruction forbidden, § 33-1603.

Tobacco, effects of, instruction, § 33-1605.

**JUDICIAL DECISIONS**

**Cited in:** *Mickelsen v. School Dist. No. 25*, 127 Idaho 401, 901 P.2d 508 (1995).

## **RESEARCH REFERENCES**

**A.L.R.** — Personal liability of public school teacher in negligence action for personal injury or death of student. 34 A.L.R.4th 228.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student. 35 A.L.R.4th 272.

Personal liability in negligence action of public school employee, other than teacher or executive or administrative officer, for personal injury or death of student. 35 A.L.R.4th 328.

**33-1225. Threats of violence — Limitation on liability.** — (1) A communication by any person to a school principal, or designee, or a communication by a student attending the school to the student's teacher, school counselor or school nurse, and any report of that communication to the school principal stating that a specific person has made a threat to commit violence on school grounds by use of a firearm, explosive, or deadly weapon defined in chapter 33, title 18, Idaho Code, is a communication on a matter of public concern. Such communication or report shall only be subject to liability in defamation by clear and convincing evidence that the communication or report was made with knowledge of its falsity or with reckless disregard for the truth or falsity of the communication or report. This section shall not be interpreted to change or eliminate other elements of defamation required by law.

(2) As used in this section, "school" means any public or private school providing instruction in kindergarten or any grades from grade one (1) through grade twelve (12) which is the subject of a threat.

**History.**

I.C., § 33-1225, as added by 2003, ch. 263, § 1, p. 698.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-1225, which comprised 1967, ch. 195, § 1, p. 625; am. 1971, ch. 3, § 1, p. 4; am. 1973, ch. 56, § 1, p. 90; am. 1978, ch. 175, § 1, p. 400, was repealed by S.L. 1984, ch. 71, § 1.

**Effective Dates.**

Section 2 of S.L. 2003, ch. 263 declared an emergency. Approved April 8, 2003.

**33-1226, 33-1227. School employees — Tuberculosis examinations.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1967, ch. 195, §§ 2, 3, p. 625; am. 1971, ch. 3, § 1, p. 4; am. 1973, ch. 56, § 1, p. 90; am. 1978, ch. 175, § 1, p. 400, were repealed by S.L. 1984, ch. 71, § 1.

**33-1228. Severance allowance at retirement.** — (1) Upon separation from public school employment by retirement in accordance with chapter 13, title 59, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 1976, as provided by section 33-1218, Idaho Code, and shall be reported by the employer to the Idaho public employee retirement system. A sum equal to one-half ( $\frac{1}{2}$ ) of the monetary value of such unused sick leave, calculated at the rate of pay for such employee during the employee's highest year of salary used in the average monthly salary, as determined by the retirement board, shall be transferred from the sick leave account provided by subsection (3) of this section and shall be credited to such employee's retirement account. Such sums shall be used by the retirement board to continue to pay, subject to applicable federal tax limits:

(a) Premiums for the retiree and the retiree's dependents at the rate for the active employee's group health, long-term care, vision, prescription drug and dental insurance programs as maintained by the employer for the active employees until the retiree and/or the retiree's spouse becomes eligible for medicare at which time the district shall make available a supplemental program to medicare for the eligible individual. Upon the death of the retiree, the surviving spouse's health coverage shall be available and continued under the same terms and conditions as the retiree. Coverage may be continued for the retiree's surviving dependent spouse and dependents until remarriage of the spouse or until the retiree's surviving dependent spouse is eligible for a group health program by an employer. The medicare supplement program will provide the same premium and benefits for all retirees of all the employers served by the same insurance carrier. However, a school district may make available to all retirees from that district other benefits in addition to the medicare supplement program, and the retiree or the district shall pay for such additional benefits.

(b) Premiums at the time of retirement for the retiree for the life insurance program maintained by the employer which may be reduced to a minimum of five thousand dollars (\$5,000) of coverage.



(2) The retiree may continue to pay the premiums for the health, accident, dental and life insurance to the extent of the funds credited to the employee's account pursuant to this section, and when these funds are expended, the premiums may be deducted from the retiree's allowance. Upon a retiree's death, any unexpended sums remaining in the retiree's account shall revert to the sick leave account. If funds are not available for payment by the Idaho public employee retirement system from the retiree's surviving dependent spouse's allowance, the insurance carrier shall implement a direct billing procedure to permit the retiree's surviving spouse to continue coverage.

(3) Each employer shall contribute to a sick leave account maintained by the public employee retirement system in trust exclusively for the purpose of the provisions of this section. The retirement board shall serve as trustee of the trust and shall be indemnified to the same extent as provided in [section 59-1305, Idaho Code](#). Assets in the trust shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law. The rate of such contribution each pay period shall consist of a percentage of employees' salaries as determined by the board, and such rate shall remain in effect until next determined by the board. Any excess balance in the sick leave account shall be invested, and the earnings therefrom shall accrue to the sick leave account except the amount required by the board to defray administrative expenses. Assets of the trust may be commingled for investment purposes with other assets managed by the retirement board. All moneys payable to the sick leave account are hereby perpetually appropriated to the board and shall not be included in its departmental budget.

(4) For purposes of this section public school employment shall be defined to include the employees of the Idaho digital learning academy, and to permit inclusion of employees of organizations funded by school districts or of contributions of employees of school districts and shall include employees of the Idaho bureau of educational services for the deaf and the blind.

### **History.**

[I.C., § 33-1228](#), as added by 1978, ch. 159, § 1, p. 347; am. 1982, ch. 206, § 1, p. 569; am. 1988, ch. 254, § 1, p. 493; am. 1990, ch. 407, § 1, p.

1133; am. 1993, ch. 398, § 1, p. 1461; am. 2006, ch. 150, § 1, p. 463; am. 2007, ch. 78, § 1, p. 205; am. 2009, ch. 55, § 1, p. 156; am. 2009, ch. 168, § 3, p. 502; am. 2018, ch. 91, § 1, p. 195.

## **STATUTORY NOTES**

### **Cross References.**

Group insurance, retirement program unaffected, § 67-5765.

Idaho bureau of educational services for the deaf and the blind, § 33-3401 et seq.

Income tax deduction for certain retirement benefits, § 63-3022A.

Public employees' retirement system, § 59-1301 et seq.

Idaho digital learning academy, § 33-5501 et seq.

### **Amendments.**

The 2006 amendment, by ch. 150, in the introductory paragraph of subsection (1), inserted “as determined by the retirement board to continue” in the second sentence, deleted “Idaho public employees” preceding “retirement board” and added “subject to applicable federal tax limits” to the third sentence; and substituted “long-term care, vision, prescription drug” for “accident” near the beginning of subsection (1)(a).

The 2007 amendment, by ch. 78, in subsection (3), inserted “in trust” in the first sentence, and added the second, third, and sixth sentences.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 55, updated the internal reference in the introductory paragraph in subsection (1) and inserted “to include the employees of the Idaho digital learning academy” in subsection (4).

The 2009 amendment, by ch. 168, updated an internal reference in the second sentence in subsection (1) and added “and shall include employees of the Idaho bureau of educational services for the deaf and the blind” in subsection (4).

The 2018 amendment, by ch. 91, substituted “during the employee’s highest year of salary used in the average monthly salary” for “at the time of retirement” in the second sentence of the introductory paragraph of subsection (1).

**Effective Dates.**

Section 4 of S.L. 2009, ch. 55 declared an emergency retroactively to July 1, 2008. Approved March 25, 2009.

• Title 33 », « Ch. 12 », « 33-1229—33-1250. »

Idaho Code 33-1229—33-1250

## **33-1229 — 33-1250. [Reserved.]**

• Title 33 », « Ch. 12 », « 33-1251. »

Idaho Code 33-1251

**33-1251. Professional standards — Title of act.** — This act shall be known and cited as the “public schools professional standards act.”

### **History.**

1969, ch. 258, § 1, p. 794; am. 1972, ch. 239, § 2, p. 626.

## **STATUTORY NOTES**

### **Compiler’s Notes.**

The words “this act” refer to S.L. 1969, Chapter 258, which is compiled as §§ 33-1208, 33-1251 to 33-1254 and 33-1258. The reference probably should be to §§ 33-1251 to 33-1258.

**33-1252. Professional standards commission — Members — Appointment — Terms.** — (1) A professional standards commission is hereby created in the department of education, consisting of eighteen (18) members, one (1) of whom shall be a member of the staff of the state department of education, and one (1) of whom shall be a member of the staff of the division of career technical education, to be appointed by the state board of education. The members shall be representative of the teaching profession of the state of Idaho, and not less than seven (7) members shall be certificated classroom teachers in the public school system of the state and shall include at least one (1) teacher of exceptional children and at least one (1) teacher in pupil personnel services. Such expansion of membership on the professional standards commission shall not require reaffirmation of the codes and standards of ethics and rules of procedure used by the professional standards commission.

(2) Except for the member from the staff of the state department of education, and the member from the staff of the division of career technical education, three (3) nominees for each position on the commission shall be submitted to the state superintendent of public instruction, for the consideration of the state board of education. Any state organization of teachers whose membership is open to all certificated teachers in the state may submit nominees for positions to be held by classroom teachers; the Idaho association of school superintendents may submit nominees for one (1) position, the Idaho association of secondary school principals may submit nominees for one (1) position; the Idaho association of elementary school principals may submit nominees for one (1) position; the Idaho school boards association may submit nominees for one (1) position; the Idaho association of special education administrators may submit nominees for one (1) position; the education departments of the private colleges of the state may submit nominees for one (1) position, the community colleges and the education departments of the public institutions of higher education may submit nominees for two (2) positions, and the colleges of letters and sciences of the institutions of higher education may submit nominees for one (1) position.

(3) The state board of education shall appoint or reappoint members of the commission for terms of three (3) years.

### **History.**

1969, ch. 258, § 2, p. 794; am. 1970, ch. 40, § 1, p. 87; am. 1972, ch. 239, § 3, p. 626; am. 1974, ch. 10, § 9, p. 49; am. 1974, ch. 158, § 1, p. 1392; am. 1979, ch. 11, § 1, p. 15; am. 1989, ch. 269, § 1, p. 657; am. 1999, ch. 329, § 3, p. 888; am. 2003, ch. 144, § 1, p. 417; am. 2016, ch. 25, § 8, p. 35.

## **STATUTORY NOTES**

### **Cross References.**

State board for career technical education, § 33-2202.

State superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

The 2016 amendment, by ch. 25, added the subsection designations to the existing paragraphs and substituted “division of career technical education” for “division of professional-technical education” in the first sentences of subsections (1) and (2).

### **Compiler’s Notes.**

For code of ethics for Idaho professional educators, referred to in the last sentence in subsection (1), see **IDAPA 08.02.02.076** at <https://adminrules.idaho.gov/rules/current/08/080202.pdf>=ro.

For Idaho school superintendents associations, referred to in subsection (2), see <https://www.idschadm.org/issa>.

For Idaho association of secondary school principals, referred to in subsection (2), see <https://www.idschadm.org/iassp>.

For Idaho association of elementary school principals, referred to in subsection (2) see <https://www.idschadm.org/iaesp>.

For Idaho school boards association, referred to in subsection (2), see <https://www.idsba.org>.

For Idaho association of special education administrators, referred to in subsection (2), see <https://www.idschadm.org/iasea>.

### **Effective Dates.**

Section 2 of S. L. 1970, ch. 40 provided that this act should be in full force and effect on and after July 1, 1970.

Section 21 of S. L. 1974, ch. 10 provided that the act should be in full force and effect on and after July 1, 1974.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — Regulation of Teacher Certification in Idaho: Proceedings Before Idaho's Professional Standards Commission Concerning the Denial of an Application for or Action Against a Teaching Certificate, John E. Rumel. 53 Idaho L. Rev. 527 (2017).

**33-1253. Chairman and vice-chairman — Secretary — Rule making.**

— At the first meeting of the commission, after the appointment of its members, it shall organize itself and name from among its members a chairman and vice-chairman who shall act in the absence of the chairman; it shall also name a secretary who may or may not be a member. The commission shall from time to time adopt such rules as are necessary to the conduct of its business.

**History.**

1969, ch. 258, § 3, p. 794.



**33-1254. Professional codes and standards — Adoption — Publication.** — The commission shall have authority to adopt recognized professional codes and standards of ethics, conduct and professional practices which shall be applicable to teachers in the public schools of the state, and submit the same to the state board of education for its consideration and approval. Upon their approval by the state board of education, the professional codes and standards shall be published by the board.

**History.**

1969, ch. 258, § 4, p. 794; am. 1991, ch. 30, § 3, p. 58.

**STATUTORY NOTES**

**Compiler's Notes.**

For code of ethics for Idaho professional educators, referred to in this section, see **IDAPA 08.02.02.076** at <https://adminrules.idaho.gov/rules/current/08/080202.pdf>=ro.

**RESEARCH REFERENCES**

**Idaho Law Review.** — Regulation of Teacher Certification in Idaho: Proceedings Before Idaho's Professional Standards Commission Concerning the Denial of an Application for or Action Against a Teaching Certificate, John E. Rumel. 53 Idaho L. Rev. 527 (2017).

**33-1255 — 33-1257. Hearings — Administrative and legal remedies.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1969, ch. 258, §§ 5-7, p. 794; am. 1972, ch. 239, § 4, p. 626; am. 1978, ch. 296, § 1, p. 753, were repealed by S.L. 1989, ch. 122, § 1.

**33-1258. Recommendations to improve professional standard.** — The commission may make recommendations to the state board of education in such areas as teacher education, teacher certification and teaching standards, and such recommendations to the state board of education or to boards of trustees of school districts as, in its judgment, will promote improvement of professional practices and competence of the teaching profession of this state, it being the intent of this act to continually improve the quality of education in the public schools of this state.

**History.**

1969, ch. 258, § 8, p. 794; am. 1972, ch. 239, § 5, p. 626.

**STATUTORY NOTES**

**Compiler's Notes.**

The words “this act” refer to S.L. 1969, ch. 258, which is compiled as §§ 33-1208, 33-1251 to 33-1254 and 33-1258. The reference probably should be to §§ 33-1251 to 33-1258.

**Effective Dates.**

Section 6 of S.L. 1972, ch. 239 provided that the act should be in full force and effect on and after July 1, 1972.

**RESEARCH REFERENCES**

**Idaho Law Review.** — Regulation of Teacher Certification in Idaho: Proceedings Before Idaho's Professional Standards Commission Concerning the Denial of an Application for or Action Against a Teaching Certificate, John E. Rumel. 53 Idaho L. Rev. 527 (2017).

## **33-1259 — 33-1270. [Reserved.]**

**33-1271. School districts — Professional employees — Negotiation agreements.** — The board of trustees of each school district, including specially chartered districts, or the designated representative(s) of such district, is hereby empowered to and shall, upon its own initiative or upon the request of a local education organization representing a majority of the professional employees, enter into a negotiation agreement with the local education organization or the designated representative(s) of such organization.

(1) The parties to such negotiations shall negotiate in good faith on those matters specified in any such negotiation agreement between the local board of trustees and the local education organization.

(2) A request for negotiations may be initiated by either party to such negotiation agreement.

(3) Upon either party making a request for negotiations, the local education organization, upon board request, shall provide to the district written evidence establishing that the local education organization represents fifty percent (50%) plus one (1) of the professional employees for negotiations. If requested by the board, the local education organization shall establish this representative status on an annual basis, prior to the commencement of negotiations. In order to establish a local education organization's representative status, a local education organization must show that within the last two (2) years, fifty percent (50%) plus one (1) of the professional employees, as defined in [section 33-1272, Idaho Code](#), indicated agreement to be represented by the local education organization for negotiation purposes. Evidence of fifty percent (50%) plus one (1) inconsistent with this provision shall not be counted in the establishment of representative status.

(4) Accurate records or minutes of the proceedings shall be kept and shall be available for public inspection at the office of the affected school district

during normal business hours.

(5) Joint ratification of all final offers of settlement shall be made in open meetings. Each party must provide written evidence confirming to the other that majority ratification has occurred.

### **History.**

1971, ch. 103, § 1, p. 223; am. 1977, ch. 309, § 1, p. 882; am. 1989, ch. 294, § 1, p. 722; am. 2011, ch. 40, § 1, p. 9; am. 2013, ch. 330, § 1, p. 862; am. 2018, ch. 219, § 1, p. 492.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 40, substituted “office of the affected school district” for “offices of the board of education” in present subsection (1).

The 2013 amendment, by ch. 330, divided the section into paragraphs and added the subsection designations; in the introductory paragraph, inserted “a majority of the” near the middle; inserted “The parties to such negotiations shall negotiate in” at the beginning of subsection (1); added subsection (3); and added the last sentence of subsection (5).

The 2018 amendment, by ch. 219, added the third and fourth sentences in subsection (3).

### **Compiler’s Notes.**

This section was amended by S.L. 2011, Chapter 96, effective March 17, 2011. The amendment by S.L. 2011, Chapter 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2012, Chapter 265, became null and void, and this section returned to its pre-2011 provisions, as amended by S.L. 2011, Chapter 40, prior to its 2013 amendment.

The letter “s” in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 5 of S.L. 2013, ch. 330 declared an emergency. Approved April 11, 2013.

## **JUDICIAL DECISIONS**

### **Analysis**

Arbitration.

Cost of living provision.

Effect of agreements on contracts.

Legislative intent.

Reduction in force procedures.

Teacher strikes.

### **Arbitration.**

A school district may be legally compelled to honor that portion of a Master Agreement between the district and a local education organization which requires the submission of grievances pertaining to the application or interpretation of the agreement to binding arbitration. *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989).

### **Cost of Living Provision.**

Where, in a written negotiation agreement with the teachers' bargaining unit, the board of trustees of a school district had agreed to provide a cost of living increase based upon the consumer price index each year when sound fiscal management allowed it, and the evidence showed that in a year when the consumer price index was up approximately 11%, the board offered the teachers a cost of living increase of only 7.5% (even though there was more than enough money available to the board to fund a full 11% increase), the evidence clearly supported the court's finding that the board did not negotiate the cost of living adjustment in good faith as required by this section. *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 657 P.2d 1 (1983).

Where the school district's board of trustees had contractual and statutory duties to negotiate and to provide teachers a cost of living increase based upon the consumer price index if certain conditions were met, it was within

the authority of the district court to determine whether the board complied with these duties. *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 657 P.2d 1 (1983).

Although this section required a school district's board of trustees to enter into a negotiation agreement with the teachers' association, nothing in the statutes required the board to agree to the inclusion of a cost of living provision in that agreement; therefore, the board's promise to provide cost of living increases if certain economic conditions were met was not unenforceable as resulting from forced negotiations. *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 657 P.2d 1 (1983).

### **Effect of Agreements on Contracts.**

A school board, currently engaged in collective bargaining negotiations or in mediation with the association representing its teachers, may send out binding individual contracts to teachers as required by statute, and those contracts become and are modified by applicable provisions of the agreement which thereafter results from negotiations and mediation which were timely brought and on-going when the individual contracts were entered into. *Buhl Educ. Ass'n v. Joint School Dist. No. 412*, 101 Idaho 16, 607 P.2d 1070 (1980).

The fact that the terms of a collective bargaining agreement may not be settled and reduced to a written binding contract at the time of the proffering of individual teacher contracts is immaterial, since the school boards and teachers may offer and accept employment subject to the terms of a collective bargaining agreement yet to be agreed upon by the parties. *Buhl Educ. Ass'n v. Joint School Dist. No. 412*, 101 Idaho 16, 607 P.2d 1070 (1980).

### **Legislative Intent.**

Nowhere has the legislature expressly prohibited a school board from agreeing to arbitrate a contract dispute as to either interpretation or procedures of implementing the contract, nor has it statutorily excluded negotiation of administration of reduction-in-force provisions. *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989).

### **Reduction in force procedures.**

The RIF (reduction in force) procedures of the Professional Agreement were not in conflict with any statutory provisions. The school district was acting within its express authority when it negotiated RIF procedures set forth in the Professional Agreement. *Hunting v. Clark County Sch. Dist.* No. 161, 129 Idaho 634, 931 P.2d 628 (1997).

### **Teacher Strikes.**

This section does not inferentially grant public school teachers the right to strike even though such strikes are not expressly prohibited. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass'n*, 98 Idaho 486, 567 P.2d 830 (1977).

Where an education association representing public school teachers alleged that a school board had refused to abide by and engaged in the procedures for resolution of impasse situations established by this section, it was error for a trial court to enjoin a teacher strike without taking any testimony relative to the charge of bad faith on the board's part. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass'n*, 98 Idaho 486, 567 P.2d 830 (1977).

**Cited in:** *Baker v. Independent School Dist.*, 107 Idaho 608, 691 P.2d 1223 (1984).

## **RESEARCH REFERENCES**

**A.L.R.** — Who may be included in “unit appropriate” for collective bargaining at school or college, under § 9(b) of National Labor Relations Act (29 USCS § 159(b)). 46 A.L.R. Fed. 580.



### **33-1271A. Existing agreements. [Null and void.]**

Null and void, pursuant to rejection of Proposition 1 on November 6, 2012.

#### **History.**

I.C., § 33-1271A, as added by 2011, ch. 96, § 16, p. 209.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

This section was enacted by S.L. 2011, Chapter 96, effective March 17, 2011. Session Laws 2011, Chapter 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section became null and void.

**33-1272. Definitions.** — As used in this act:

(1) “Professional employee” means any certificated employee of a school district, including charter districts; provided however, that administrative personnel including superintendents, supervisors or principals are excluded from the professional employee group for the purposes of negotiations.

(2) “Local education organization” means any local district organization duly chosen and selected by fifty percent (50%) plus one (1) of the professional employees, excluding administrative personnel as addressed in this section, as their representative organization for negotiations under this act.

(3) “Negotiations” means publicly meeting and conferring in good faith by a local board of trustees and the authorized local education organization, or the respective designated representatives of both parties for the purpose of reaching an agreement, upon matters and conditions subject to negotiations as specified in a negotiation agreement between said parties.

For the purposes of this section, “good faith” means honesty, fairness and lawfulness of purpose with the absence of any intent to defraud, act maliciously or take unfair advantage or the observance of reasonable standards of fair dealing.

**History.**

1971, ch. 103, § 2, p. 223; am. 1989, ch. 294, § 2, p. 722; am. 2013, ch. 155, § 1, p. 368; am. 2013, ch. 330, § 2, p. 862.

**STATUTORY NOTES**

**Amendments.**

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 155, inserted “publicly” near the beginning of subsection (3).

The 2013 amendment, by ch. 330, deleted “Definition of terms” at the beginning of the introductory paragraph; in subsection (1), inserted “administrative personnel including” and substituted “for the purposes of negotiations” for “if a negotiation agreement between the board and local education organization so specifies”; in subsection (2), substituted “fifty percent (50%) plus one (1)” for “a majority” and inserted “excluding administrative personnel as addressed in this section”; and added the last sentence.

### **Compiler’s Notes.**

The term “this act” in the introductory paragraph and in subsection (2) refers to S.L. 1971, Chapter 103, which is compiled as §§ 33-1271, 33-1272, 33-1273, 33-1274, 33-1275, and 33-1276.

This section was amended by S.L. 2011, Chapter 96, effective March 17, 2011. The amendment by S.L. 2011, Chapter 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendments by S.L. 2011, Chapter 295 and S.L. 2012, Chapter 265, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

### **Effective Dates.**

Section 3 of S.L. 2013, ch. 155 declared an emergency. Approved March 22, 2013.

Section 5 of S.L. 2013, ch. 330 declared an emergency. Approved April 11, 2013.

## **JUDICIAL DECISIONS**

### **Local Education Association.**

The Oneida Education Association was a “local education association” within the meaning of this section and was the representative of the teacher employees of School District No. 351. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass’n*, 98 Idaho 486, 567 P.2d 830 (1977).

The Bear Lake Education Association was a “local education association” within the meaning of this section and was the proper

representative of the teachers of Bear Lake School District No. 33. **Bear Lake Educ. Ass'n v. Board of Trustees**, 116 Idaho 443, 776 P.2d 452 (1989).

**33-1273. School districts — Professional employees — Negotiations.**

— The local education organization shall be the exclusive representative for all professional employees in that district for purposes of negotiations pursuant to the provisions of this chapter. The individual or individuals selected to negotiate for the professional employees shall be a member of the organization designated to represent the professional employees and shall be a professional employee of the local school district. However, in the event a local board of trustees chooses to designate any individual(s) other than the superintendent or elected trustee(s) of the school district as its representative(s) for negotiations, the local educational organization is authorized to designate any individual(s) of its choosing to act as its representative(s) for negotiations. Negotiations pursuant to this chapter shall only occur between the respective designated representatives.

**History.**

1971, ch. 103, § 3, p. 223; am. 1989, ch. 294, § 3, p. 722; am. 2013, ch. 330, § 3, p. 862.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 330, inserted “pursuant to the provisions of this chapter” at the end of the first sentence; and substituted the present last sentence for the former last sentence, which read: “A local board of trustees or its designated representative(s) shall negotiate matters covered by a negotiations agreement only with the local education organization or its designated representative(s).”

**Compiler’s Notes.**

This section was amended by S.L. 2011, Chapter 96, effective March 17, 2011. The amendment by S.L. 2011, Chapter 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, Chapter 295, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

The letter “s” in parentheses so appeared in the law as enacted.

Section 4 of S.L. 2013, ch. 330 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**Effective Dates.**

Section 5 of S.L. 2013, ch. 330 declared an emergency. Approved April 11, 2013.

**JUDICIAL DECISIONS**

**Cited in:** Gilbert v. Nampa School Dist. No. 131, 104 Idaho 137, 657 P.2d 1 (1983).

### **33-1273A. Negotiations in open session. [Repealed.]**

Repealed by S.L. 2015, ch. 271, § 3, effective July 1, 2015.

#### **History.**

I.C., § 33-1273A, as added by 2013, ch. 155, § 2, p. 368.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 1273A, was enacted by S.L. 2011, Chapter 96, effective March 17, 2011. Session Laws 2011, Chapter 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section became null and void.

#### **Compiler's Notes.**

This section was amended by S.L. 2015, ch. 141, § 65; however, the amendment could not be given effect, as the section was repealed by S.L. 2015, ch. 271, § 3, effective July 1, 2015.

**33-1274. Appointment of mediators — Compensation.** — In the event the parties in negotiations are not able to come to an agreement upon items submitted for negotiations under a negotiations agreement between the parties, one or more mediators may be appointed. The issue or issues in dispute shall be submitted to mediation at the request of either party in an effort to induce the representatives of the board and the local education organization to resolve the conflict. The procedures for appointment of and compensation for the mediators shall be determined by both parties.

**History.**

1971, ch. 103, § 4, p. 223; am. 1989, ch. 294, § 4, p. 722.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was amended by S.L. 2011, Chapter 96, effective March 17, 2011. The amendment by S.L. 2011, Chapter 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, Chapter 295, became null and void, and this section returned to its pre-2011 provisions.

**JUDICIAL DECISIONS**

**Effect of Agreements on Contracts.**

A school board, currently engaged in collective bargaining negotiations, or in mediation, with the association representing its teachers, may send out binding, individual contracts to teachers as required by statute, and those contracts become and are modified by applicable provisions of the agreement which thereafter results from negotiations and mediation which were timely brought and on-going when the individual contracts were entered into. *Buhl Educ. Ass'n v. Joint School Dist. No. 412*, 101 Idaho 16, 607 P.2d 1070 (1980).



The fact that the terms of a collective bargaining agreement may not be settled and reduced to a written binding contract at the time of the proffering of individual teacher contracts is immaterial, since the school boards and teachers may offer and accept employment subject to the terms of a collective bargaining agreement yet to be agreed upon by the parties. *Buhl Educ. Ass'n v. Joint School Dist. No. 412*, 101 Idaho 16, 607 P.2d 1070 (1980).

**Cited in:** *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 657 P.2d 1 (1983).

### **33-1274A. Procedures upon agreement. [Null and void.]**

Null and void, pursuant to rejection of Proposition 1 on November 6, 2012.

#### **History.**

I.C., § 33-1274A, as added by 2011, ch. 96, § 21, p. 209; am. 2011, ch. 295, § 8, p. 821.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

This section was enacted by S.L. 2011, ch. 96, effective March 17, 2011. Session Laws 2011, ch. 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendment by S.L. 2011, ch. 295, became null and void.

**33-1275. Terms of agreements.** — (1) All agreements, by any name or title, entered into pursuant to the provisions of this act, shall have a one (1) year duration of July 1 through June 30 of the ensuing fiscal year. The parties shall not have the authority to enter into any agreement negotiated under the provisions of this act that has any term that allows for such agreement or any provision of such agreement to be in any force or effect for multiple years or indefinitely, or otherwise does not expire on its own terms on or before June 30 of the ensuing fiscal year.

(2) Notwithstanding the provisions of subsection (1) of this section, upon mutual ratification, any item other than compensation and benefits as defined in subsection (3) of this section of any agreement entered into pursuant to this act may have a nonrolling two (2) year duration with a designated start date and end date. A second year term for any item not defined in subsection (3) of this section cannot be added, automatically or by mutual consent, back into the agreement after the expiration of the first year but rather may be addressed by the parties at the expiration of the end date of the two (2) year term.

(3) For purposes of this section, “compensation” means salary and benefits for professional employees. “Benefits” means employee insurance, leave time and sick leave benefits.

**History.**

1971, ch. 103, § 5, p. 223; am. 2013, ch. 329, § 1, p. 860.

**STATUTORY NOTES**

**Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

**Amendments.**

The 2013 amendment, by ch. 329, rewrote the section to the extent that a detailed comparison is impracticable.

**Compiler’s Notes.**

The term “this act” in subsections (1) and (2) refers to S.L. 2013, Chapter 329, which is codified as this section only. The reference probably should be to §§ 33-1271 to 33-1276, as enacted by S.L. 1971, Chapter 103.

This section was amended by S.L. 2011, Chapter 96, effective March 17, 2011. The amendment by S.L. 2011, Chapter 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment, and the amendment by S.L. 2011, Chapter 295, became null and void, and this section returned to its pre-2011 provisions, prior to its 2013 amendment.

Section 3 of S.L. 2013, ch. 329, as amended by S.L. 2014, ch. 143 provided: “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2015.” Section 2 of S.L. 2015, ch. 108 amended the provisions of S.L. 2014, ch. 143, § 1, deleting the provisions of that section which would have repealed this version of the section and would have enacted a new version, effective July 1, 2015.

### **Effective Dates.**

Section 3 of S.L. 2013, ch. 329 declared an emergency and made this section retroactive to November 21, 2012. Approved April 11, 2013.

## **JUDICIAL DECISIONS**

### **Effect of Agreements on Contracts.**

A school board, currently engaged in collective bargaining negotiations, or in mediation, with the association representing its teachers, may send out binding, individual contracts to teachers as required by statute, and those contracts become and are modified by applicable provisions of the agreement which thereafter results from negotiations and mediation which were timely brought and on-going when the individual contracts were entered into. [\*Buhl Educ. Ass’n v. Joint School Dist. No. 412\*, 101 Idaho 16, 607 P.2d 1070 \(1980\).](#)

The fact that the terms of a collective bargaining agreement may not be settled and reduced to a written binding contract at the time of the proffering of individual teacher contracts is immaterial, since the school boards and teachers may offer and accept employment subject to the terms of a collective bargaining agreement yet to be agreed upon by the parties.

Buhl Educ. Ass'n v. Joint School Dist. No. 412, 101 Idaho 16, 607 P.2d 1070 (1980).

**Cited in:** Gilbert v. Nampa School Dist. No. 131, 104 Idaho 137, 657 P.2d 1 (1983).

**33-1276. Intent of act.** — Nothing contained herein is intended to or shall conflict with, or abrogate the powers or duties and responsibilities vested in the legislature, state board of education, and the board of trustees of school districts by the laws of the state of Idaho. Each school district board of trustees is entitled, without negotiation or reference to any negotiated agreement, to take action that may be necessary to carry out its responsibility due to situations of emergency or acts of God.

**History.**

1971, ch. 103, § 6, p. 223.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “herein” in the first sentence seemingly refers to S.L. 1971, Chapter 103, codified as §§ 33-1271, 33-1272, 33-1273, 33-1274, 33-1275, and 33-1276.

This section was amended by S.L. 2011, Chapter 96, effective March 17, 2011. The amendment by S.L. 2011, Chapter 96 was the subject of Proposition 1 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 amendment became null and void, and this section returned to its pre-2011 provisions.

**Effective Dates.**

Section 7 of S.L. 1971, ch. 103 provided that this act should be in full force and effect on and after July 1, 1971.

**JUDICIAL DECISIONS**

Analysis

[Equitable agreements.](#)

[Negotiation procedures.](#)

[Equitable Agreements.](#)

The theory behind §§ 33-1271 through 33-1276 is that the free opportunity for negotiation between the school districts and accredited representatives of the teacher employees will likely promote agreements which are equitable to both parties. *Bear Lake Educ. Ass'n v. Board of Trustees*, 116 Idaho 443, 776 P.2d 452 (1989).

### **Negotiation Procedures.**

The procedures set forth in §§ 33-1271 to 33-1276 reflect the legislature's determination that structured negotiation procedures would benefit not only school districts and teachers, but the public as well. By these procedures, the legislature has specifically empowered and required the board of trustees of each school district to enter into a negotiations agreement. *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 657 P.2d 1 (1983).

### **33-1277, 33-1278. [Reserved.]**

**33-1279. Released time for service on state committees and commission.** — (1) Each certificated employee of any school district, including specially chartered districts, shall be entitled to and be allowed released time for service on committees and commissions established by the state of Idaho, or established by the legislature, or established by any of the departments or agencies of the state of Idaho.

Each certificated employee shall be entitled to five (5) such days of released time, and time beyond five (5) days shall be allowed at the discretion of the board of trustees.

(2) No such certificated employee shall lose any salary or other benefits because of such released time for service on any such committee or commission and shall not be required to make up any released time spent in serving on any such committee or commission; except that the amount of any honorarium or compensation received for service on committees or commissions, except actual and necessary expenses, shall be deducted from salary otherwise due such certificated employee.

#### **History.**

I.C., § 33-1279, as added by 1979, ch. 200, § 1, p. 580.



**33-1280. American Indian languages teaching authorization.** — (1) As used in this section, “Indian tribe” is as defined in section 67-4001, Idaho Code.

(2) It is the policy of the state of Idaho to preserve, protect and promote the rights of Indian tribes to use, practice and develop their native languages and to encourage American Indians in the state to use, study and teach their native languages in order to encourage and promote: (a) The survival of the native language;

(b) Increased student scholarship;

(c) Increased student awareness of the student’s culture and history; and

(d) Increased student success.

(3) The state board of education shall promulgate rules authorizing American Indian languages teachers to teach in the public schools of this state.

(4) Each Indian tribe may establish its own system of designation for individuals qualified to teach that tribe’s native language. In establishing such a system, the tribe shall determine: (a) The development of an oral and written qualification test;

(b) Which dialects shall be used in the test;

(c) Whether the tribe will standardize the tribe’s writing system; (d) How the teaching methods will be evaluated in the classroom; and (e) The period of time for which a tribal designation shall be valid.

(5)(a) Each Indian tribe shall provide to the state board of education the names of those highly and uniquely qualified individuals who have been designated to teach the tribe’s native language.

(b) Upon receiving the names of American Indian languages teachers designated by an Indian tribe, the state board of education shall authorize those individuals as American Indian languages teachers in accordance with rules of the board.

(6) Notwithstanding any other provision of law, the state board of education shall not require an American Indian languages teacher who has obtained tribal designation to teach a native language to hold a specific academic degree or to complete a teacher education program.

(7)(a) An American Indian languages teaching authorization shall qualify the authorized individual to accept a teaching position or assignment in any school district of the state that offers or permits courses in an American Indian language.

(b) A holder of an American Indian languages teaching authorization who does not also have a teaching certificate as provided in [section 33-1201, Idaho Code](#), may not teach in a school district of this state any subject other than the American Indian language for which he or she is authorized to teach.

**History.**

[I.C., § 33-1280](#), as added by 2002, ch. 265, § 1, p. 787.



## **CHAPTER 13**

### **EDUCATIONAL INTERPRETERS**

Section.

33-1301. Short title.

33-1302. Legislative findings.

33-1303. Definitions.

33-1304. Qualification of educational interpreters.

**33-1301. Short title.** — This chapter shall be known and may be cited as the “Idaho Educational Interpreter Act.”

**History.**

**I.C., § 33-1301**, as added by 2006, ch. 173, § 1, p. 531.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 33-1301 to 33-1303, which comprised **I.C., §§ 33-1301, 33-1302** and **33-1303**, as added by 1984, ch. 286, § 2, p. 660, were repealed by S.L. 1998, ch. 88, § 8, effective July 1, 1998.

Former §§ 33-1304 to 33-1337, comprising S.L. 1963, ch. 13, §§ 190 to 223, p. 27; am. 1963, ch. 89, § 1, p. 285; am. 1963, ch. 149, § 1, p. 449; am. 1963, ch. 266, § 1, p. 678; am. 1963, ch. 343, § 1, p. 981; am. 1965, ch. 45, § 1, p. 68; am. 1965, ch. 90, § 1, p. 150; am. 1965, ch. 194, § 1, p. 406, were repealed by S.L. 1967, ch. 115, § 12, p. 222, effective July 1, 1967.

**33-1302. Legislative findings.** — The legislature hereby finds that interpreting services in Idaho public schools, kindergarten through grade twelve (12), for students who are deaf, hard of hearing or deaf-blind need to be improved. The absence of state standards for evaluating educational interpreters allows for inconsistencies in the delivery of educational information to students who are in need of such services. The legislature recognizes that educational interpreters in Idaho public schools must not only interpret the spoken word but must also convey concepts and facilitate the student's understanding of the educational material. The legislature also finds that among the many factors that influence student success, there is a correlation between the academic achievements of deaf, hard of hearing and deaf-blind students and the competency of their interpreters. Therefore, the legislature finds that Idaho educational public policy is served by establishing standards for persons employed in the Idaho public schools as educational interpreters.

**History.**

I.C., § 33-1302, as added by 2006, ch. 173, § 1, p. 531.

**STATUTORY NOTES**

**Prior Laws.**

For former § 33-1302, see Prior Laws, § 33-1301.

**33-1303. Definitions.** — The following words and phrases used in this chapter are defined as follows:

- (1) “Board” means the state board of education.
- (2) “Bureau” means the Idaho bureau of educational services for the deaf and the blind.
- (3) “Deaf” means a person who is not able to process information aurally and whose primary means of communication is visual.
- (4) “Deaf-blind” means a person who is deaf or hard of hearing and who also has significant visual impairment or is legally blind.
- (5) “Educational interpreter” means a person employed in the Idaho public schools, kindergarten through grade twelve (12), to provide interpreting services to students who are deaf, hard of hearing or deaf-blind.
- (6) “Educational interpreter performance assessment” means a statistically valid and reliable assessment tool administered by the boys town national research hospital or its successor organization.
- (7) “Hard of hearing” means a person who has a hearing deficit, who is able to process information aurally with or without the use of a hearing aid or other device that enhances the ability of the person to hear, and whose primary means of communication may be visual.
- (8) “Interpreter education program” means a postsecondary degree program of at least two (2) years in duration that is accredited by the state board of education or an equivalent program accredited by another state, district or territory or by a professional accreditation body.
- (9) “Interpreting” means the process of providing accessible communication between and among persons who are deaf, hard of hearing or deaf-blind, and those who are hearing. The process includes, but is not limited to, communication between American sign language or other form of manual communication and English. The process may also involve various other modalities that involve visual, gestural and tactile methods.

**History.**

I.C., § 33-1303, as added by 2006, ch. 173, § 1, p. 531; am. 2010, ch. 191, § 1, p. 405.

## STATUTORY NOTES

### Cross References.

Idaho bureau of educational services for the deaf and the blind, § 33-3401 et seq.

### Prior Laws.

For former § 33-1303, see Prior Laws, § 33-1301.

### Amendments.

The 2010 amendment, by ch. 191, added subsection (2) and redesignated the subsequent subsections accordingly.

### Compiler's Notes.

The educational interpreter performance assessment, referred to in subsection (6), can be found at <https://classroominterpreting.org/EIPA/index.asp>.

For additional information on the boys town national research hospital, referred to in subsection (6), see <https://www.boystownhospital.org>.



**33-1304. Qualification of educational interpreters.** — (1) Except as provided in this section, no person shall act as an educational interpreter in an Idaho public school unless the person has been qualified to do so. The person shall be qualified if the person:

(a) Has achieved a score of 3.5 or higher on the educational interpreter performance assessment or has achieved a comparable score on an equivalent test as determined by the bureau; or

(b) Is currently certified by:

(i) The registry of interpreters for the deaf;

(ii) The national association of the deaf at a level of III or higher;

(iii) The registry of interpreters for the deaf, oral transliteration for oral transliterators; or

(iv) The testing, evaluation, and certification unit for cued language transliterators.

(2) An educational interpreter currently employed in an Idaho public school may continue in the practice of educational interpreting without meeting the requirements of subsection (1) of this section, provided that such requirements are met on or before June 30, 2009.

(3) Effective July 1, 2009, newly hired educational interpreters who have not worked in an Idaho public school as an educational interpreter in kindergarten through grade 12 prior to the enactment of this chapter may apply in writing to the bureau for emergency authorization to work as an educational interpreter for two (2) years before being required to meet the requirements of subsection (1) of this section. An educational interpreter who has received an emergency authorization under this subsection may apply in writing to the bureau for a onetime one (1) year extension of the emergency authorization. The bureau may grant such a one (1) year extension of the emergency authorization for good cause shown.

(4) A graduate of an interpreter education program may serve as an educational interpreter in Idaho public schools for persons of school age as

defined in [section 33-201, Idaho Code](#), before meeting the requirements of subsection (1) of this section for one (1) year following such graduation.

(5) Educational interpreters employed by an Idaho public school must complete a minimum of eighty (80) hours of training in the areas of interpreting or transliterating every five (5) years. This training must be documented and may include home study coursework, seminars, workshops and mentoring programs.

(6) The board is authorized to promulgate rules, if applicable, to implement this chapter.

### **History.**

[I.C., § 33-1304](#), as added by 2006, ch. 173, § 1, p. 531; am. 2010, ch. 191, § 2, p. 405; am. 2020, ch. 19, § 1, p. 55.

## **STATUTORY NOTES**

### **Prior Laws.**

For former § 33-1304, see Prior Laws, § 33-1301.

### **Amendments.**

The 2010 amendment, by ch. 191, in paragraph (1)(a) and throughout subsection (3), substituted “bureau” for “board”; and in the next-to-last sentence in subsection (3), substituted “educational interpreter” for “education interpreter.”

The 2020 amendment, by ch. 19, substituted “public schools for persons of school age as defined in [section 33-201, Idaho Code](#)” for “public school, kindergarten through grade twelve (12)” near the middle of subsection (4); deleted “in kindergarten through grade twelve (12)” following “Idaho public school” near the beginning of subsection (5); and substituted “rules, if applicable” for “rules necessary” in subsection (6).

### **Compiler’s Notes.**

The Idaho registry of interpreters for the deaf, referred to in paragraph (1)(b)(i), can be found at <https://president2244.wildapricot.org>.

The national association of the deaf, referred to in paragraph (1)(b)(ii), can be found at <https://www.nad.org>.

For more on cued language transliterators, referred to in paragraph (1)(b) (iv), see <http://www.cuedspeech.org/resources/cuedspeech-transliterations.php>.



## **CHAPTER 14**

### **TRANSFER OF PUPILS**

Section.

33-1401. Definitions.

33-1402. Enrollment options.

33-1402A. Transfer of student in youth-care facility. [Repealed.]

33-1403. Transfer of pupils by initiative of the board of trustees.

33-1404. Districts to receive pupils.

33-1405. Rates of tuition — Tuition certificates.

33-1406. Bills of tuition.

33-1407. Payment of tuition — Suit to recover payment.

33-1408. Special levy for tuition.

**33-1401. Definitions.** — For the purposes of tuition charges and payments, the following words and phrases shall have these meanings:

1. “District” means any public school district including specially chartered school districts.
2. “Residence” of a pupil means the residence of his parent or guardian.
3. “Home district” means the school district of the pupil’s residence.
4. “Creditor district” means a district in which nonresident pupils are in attendance.
5. “Nonresident pupils” mean pupils attending schools in districts other than their home districts, or from other states.
6. “Debtor district” means the home district of nonresident pupils.
7. “Pupil” means a pupil in any grade, kindergarten through twelve (12).
8. “Elementary pupil,” in the case of districts not giving instruction above grade eight (8), means any pupil. In all other districts it means any pupil in grades kindergarten through six (6).
9. “Secondary pupil” means, in the case of districts which give instruction beyond grade eight (8) any pupil in grades seven (7) through twelve (12).
10. “Guardian” means any person so designated by court order, or any person with whom the pupil is residing and making his home on a full-time basis, provided such person has in his possession a properly executed power of attorney for the care and custody of the pupil for a period of time not less than the balance of the school term.

**History.**

1963, ch. 13, § 72, p. 27; am. 1974, ch. 76, § 1, p. 1163; am. 1990, ch. 43, § 1, p. 67.

**RESEARCH REFERENCES**

**A.L.R.** — Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college. [53 A.L.R.3d 641](#).

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college. [56 A.L.R.3d 641](#).

**33-1402. Enrollment options.** — Beginning with the 1991-92 school year, an enrollment options program shall be implemented as provided in this section.

Whenever the parent or guardian of any pupil determines that it is in the best interest of the pupil to attend a school within another district, or to attend another school within the home district, such pupil, or pupils, may be transferred to and attend the selected school, subject to the provisions of this section and [section 33-1404, Idaho Code](#). The pupil's parent or guardian must apply annually for admission to a school within another district, or to another school within the home district, on a form provided by the state department of education. The application, accompanied by the pupil's accumulative record, must be submitted to the receiving school district by February 1 for enrollment during the following school year, and notice of such application given to the home district. The receiving school district, or the receiving school within the home district, shall notify the applicant within sixty (60) days and, if denied, must include written explanation of the denial. Upon agreement between the resident and the nonresident school boards, or between the affected schools within the home district, the deadlines for application may be waived. Whenever any pupil enrolls in, and attends a school outside the district within which the parent or guardian resides, the parent or guardian shall be responsible for transporting the pupil to and from the school or to an appropriate bus stop within the receiving district. For students attending another school within the home district, the parent or guardian is responsible for transporting the pupil to and from an appropriate bus stop. Tuition shall be waived for any pupils allowed under the provisions of this section.

No pupil shall gain eligibility to participate in extracurricular activities in violation of policies governing eligibility as a result of an enrollment option transfer to another school district.

A pupil who applies and is accepted in a nonresident school district, but fails to attend the nonresident district, shall be ineligible to again apply for an enrollment option in that nonresident district.



No district shall take any action to prohibit or prevent application by resident pupils to attend school in another school district or to attend another school within the home district. By resolution of the board of trustees, any district may opt not to receive pupils in the enrollment options program.

A pupil under suspension or expulsion shall be ineligible for the provisions of this section.

The state department of education shall conduct an annual survey of districts participating in the enrollment options program to determine the number of participants, the number of denied applications, the effectiveness of the program, and other relevant information, and prepare an annual report of the program.

**History.**

**I.C., § 33-1402**, as added by 1990, ch. 43, § 2, p. 67; am. 1993, ch. 76, § 1, p. 202.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-1402, which comprised S.L. 1963, ch. 13, § 73, p. 27; am. 1975, ch. 22, § 1, p. 34, was repealed by S.L. 1976, ch. 85, § 1.

**33-1402A. Transfer of student in youth-care facility. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 33-1402A, as added by 1967, ch. 323, § 1, p. 952; am. 1973, ch. 293, § 1, p. 617, was repealed by S.L. 1983, ch. 85, § 1, effective March 28, 1983.

**33-1403. Transfer of pupils by initiative of the board of trustees. —**

Whenever the board of trustees of any school district shall determine that it is in the best interest of any of its pupils to attend school in another district within this state, the boards of trustees of the districts may annually agree, in writing, that such pupil or pupils shall be transferred to and attend the designated school or schools of the other district party to the agreement.

Whenever the board of trustees of any Idaho school district abutting upon another state shall determine that it is in the best interest of any of its pupils to attend school in a school district in such neighboring state, the board of trustees may annually agree, in writing, with the governing board of the nearest appropriate school district in the neighboring state for the education, and transportation if the school district attended abuts on the home district, of such pupil or pupils. Any such agreement shall specify the rate of tuition, and cost of transportation if any, to be paid by the Idaho school district, and the agreement shall be entered into the records of the board of trustees and a copy thereof filed with the state board of education.

The board of trustees of any Idaho school district, as a creditor district, may, subject to the approval of the state board of education, enter into an agreement with the governing body of any school district in another state, as the debtor district, to educate, and if necessary transport, any of the pupils of such debtor district upon such terms and conditions as may be agreed upon and approved, but the rate of tuition to be charged by the Idaho school district shall be not less than the gross per-pupil cost of the credit district, as defined in [section 33-1405, Idaho Code](#), plus the per-pupil costs paid by the state for the employer's share of social security, and the employer's share of retirement for the employees of the creditor district for the previous fiscal year, and other appropriate costs, all as determined by the state board of education. A copy of the agreement shall be entered into the records of the board of trustees and a copy thereof shall be filed with the state board of education.

**History.**

1963, ch. 13, § 74, p. 27; am. 1973, ch. 117, § 1, p. 218; am. 1975, ch. 22, § 2, p. 34; am. 1976, ch. 85, § 2, p. 290; am. 1978, ch. 174, § 1, p. 398.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law Analysis**

Discretion of trustees.

Liability for tuition.

Transfer out of state.

#### **Discretion of Trustees.**

Whether children from one district should be permitted or required to attend school in another district in or out of the state, except where a vote of the electors was required, was left to the discretion of the trustees of the district wherein they resided. *Hay v. Class B School Dist. No. 42*, 84 Idaho 501, 373 P.2d 922 (1962).

The residents of the previously existing school districts in voting their approval of a plan for reorganization were charged with knowledge of the discretionary power vested in the school trustees by the statutes to make such changes in the operation of the district and the place of attendance of the children of its various areas as changing conditions could warrant or require. *Hay v. Class B School Dist. No. 42*, 84 Idaho 501, 373 P.2d 922 (1962).

#### **Liability for Tuition.**

The Idaho statutes contemplated that tuition would be paid for a nonresident pupil and the mere change of the physical presence of the pupil from living in one district to living in another, without lawful change of residence, did not avoid provisions for payment of tuition. *Smith v. Binford*, 44 Idaho 244, 256 P. 366 (1927).

#### **Transfer Out of State.**

The adoption of the plan for the attendance of Idaho students at the nearest and most convenient schools either in the adjoining state of Washington or another county of Idaho was not intended to be a permanent arrangement; but the establishment or discontinuance of attendance units was left to the discretion of the trustees especially where, in view of the increased tuition rate in Washington, schooling could be more

advantageously furnished in Idaho. Hay v. Class B School Dist. No. 42, 84 Idaho 501, 373 P.2d 922 (1962).

**33-1404. Districts to receive pupils.** — Every school district shall receive and admit pupils transferred thereto, where payment of their tuition is to be paid by the home district, or waived by the receiving district, except when any such transfer would work a hardship on the receiving district. Each receiving school district shall be governed by written policy guidelines, adopted by the board of trustees, which define hardship impact upon the district or upon an individual school within the district. The policy shall provide specific standards for acceptance and rejection of applications for accepting out of district pupils. Standards may include the capacity of a program, class, grade level or school building. Standards may not include previous academic achievement, athletic or other extracurricular ability, disabling conditions, or proficiency in the English language.

Nonresident pupils who are placed by court order under provisions of the Idaho juvenile corrections or child protective acts and reside in licensed homes, agencies and institutions shall be received and admitted by the school district in which the facility is located without payment of tuition.

Homeless children and youth as defined by the McKinney-Vento homeless assistance act [42 U.S.C. section 11301 et seq.](#), may attend any school district or school within a district without payment of tuition when it is determined to be in the best interest of that child.

### **History.**

1963, ch. 13, § 75, p. 27; am. 1978, ch. 174, § 2, p. 398; am. 1983, ch. 85, § 2, p. 176; am. 1990, ch. 43, § 3, p. 67; am. 1990, ch. 272, § 1, p. 766; am. 2001, ch. 93, § 3, p. 232; am. 2004, ch. 23, § 6, p. 25; am. 2010, ch. 235, § 15, p. 542.

## **STATUTORY NOTES**

### **Cross References.**

Child protective act, § 16-1601 et seq.

Juvenile corrections act, § 20-501 et seq.

### **Amendments.**

This section was amended by two 1990 acts which appear to be compatible and have been compiled together.

The 1990 amendment, by ch. 43, § 3, in the first sentence of the first paragraph, after “a hardship on the receiving district” deleted, “but no district shall be required to accept and admit secondary school pupils who have not completed the grades given in their home districts, nor pupils who have failed in any of their home district classes in the year next preceding the proposed transfer”; added the second, third and fourth sentences to the first paragraph; and designated the former second sentence as the present second paragraph.

The 1990 amendment, by ch. 272, § 1, designated the former second sentence as the present second paragraph; at the end of the second paragraph inserted “without payment of tuition”; and added the third paragraph.

The 2010 amendment, by ch. 235, in the last sentence in the first paragraph, substituted “disabling conditions” for “handicapping conditions”; and in the last paragraph, substituted “defined by the McKinney-Vento homeless assistance act [42 U.S.C. section 11301 et seq.](#)” for “defined by the Stewart B. McKinney homeless assistance act ([P.L. 100-77](#)).”

**33-1405. Rates of tuition — Tuition certificates.** — The state department of education shall prepare and distribute all necessary forms; and shall issue to each school district, annually, a tuition certificate bearing a serial number, which certificate shall authorize the receiving district to charge and to bill for the tuition of its nonresident pupils where tuition has not been waived.

In determining tuition rates to be charged by any creditor school district, the state department of education shall compute the sum of that district's maintenance and operation costs, depreciation on its buildings, equipment, and other property, and the interest, if any paid by it on bonded debt or registered warrants. The said state department of education shall then compute what proportion of the sum of said costs, depreciation and interest is allocable to elementary schools, and what proportion is allocable to secondary schools, in the district. The proportion allocable to elementary schools shall then be divided by the average daily attendance of elementary school pupils, and the proportion allocable to secondary schools shall be divided by the average daily attendance of secondary school pupils, in the district, and the amount so determined shall be the gross per-pupil cost, elementary or secondary, as the case may be. The net per-pupil cost shall be the gross per-pupil cost less the per-pupil apportionment to the district of any foundation program funds.

Computations of tuition rates shall be made as of the school year next preceding the year for which tuition charges are determined and made.

Charges for tuition made by any creditor school district shall be its net per-pupil cost, as hereinabove defined; except that its gross per-pupil cost shall be charged where any pupil has transferred to the creditor district by transfer other than one prescribed by [section 33-1403, Idaho Code](#), or where the home district of any pupil attending school in the creditor district is without the state of Idaho.

The board of trustees of a school district may request a waiver from the state board of education of any portion of the tuition rate determined pursuant to this section. A waiver request must be made for each individual student, and may be requested for up to four (4) years, subject to annual



review by the local board of trustees. Waivers must be requested before April 1 of the year prior to the operative date.

### **History.**

1963, ch. 13, § 76, p. 27; am. 1985, ch. 107, § 13, p. 191; am. 1990, ch. 43, § 4, p. 67; am. 2005, ch. 97, § 1, p. 317.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 2 of S.L. 2005, ch. 97, declared an emergency. Approved March 1, 2005.

## **JUDICIAL DECISIONS**

### Decisions Under Prior Law Analysis

[Determination of residence.](#)

[Liability for tuition.](#)

### **[Determination of Residence.](#)**

Payment of tuition depended on legal residence of parent. [Smith v. Binford, 44 Idaho 244, 256 P. 366 \(1927\).](#)

### **[Liability for Tuition.](#)**

The Idaho statutes contemplated that tuition would be paid for a nonresident pupil and the mere change of the physical presence of the pupil from living in one district to living in another, without lawful change of residence, did not avoid provisions for payment of tuition. [Smith v. Binford, 44 Idaho 244, 256 P. 366 \(1927\).](#)

## **RESEARCH REFERENCES**

**A.L.R.** — Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college. [53 A.L.R.3d 641.](#)

Validity of exaction of fees from children attending elementary or secondary public schools. [41 A.L.R.3d 752.](#)

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college. [56 A.L.R.3d 641](#).

**33-1406. Bills of tuition.** — Bills of tuition for nonresident pupils shall be rendered by each creditor district and for nonresident pupils attending any school of the creditor district under the provisions of section 33-1403 or 33-1404, Idaho Code, the bill of tuition shall be submitted to the home district of such pupils. In all other cases, the creditor district may submit to the parent of any nonresident pupil attending school in its district a bill of tuition of such pupil, and such parent shall be liable for the payment of said tuition, if so billed. Tuition reimbursement for nonresident pupils who are placed by court order under provisions of the Idaho juvenile corrections or child protective acts may be obtained by the creditor district through procedures established in section 33-1002, Idaho Code, for nonresident tuition-equivalency allowance.

Each bill of tuition submitted to a home district shall show the serial number of the tuition certificate last issued to the creditor district by the state department of education and shall show also the number of pupils for whom tuition is charged, which charge shall be as shown by the said tuition certificate.

Bills of tuition, if submitted other than annually, shall be apportioned according to the number of school months for which any such bill is applicable. A fraction of a school month shall be deemed a school month.

### **History.**

1963, ch. 13, § 77, p. 27; am. 1974, ch. 76, § 2, p. 1163; am. 1976, ch. 85, § 3, p. 290; am. 1983, ch. 85, § 3, p. 176; am. 1985, ch. 107, § 14, p. 191; am. 2004, ch. 23, § 7, p. 25; am. 2012, ch. 257, § 9, p. 709.

## **STATUTORY NOTES**

### **Cross References.**

Child protective act, § 16-1601 et seq.

Juvenile corrections act, § 20-501 et seq.

### **Amendments.**

The 2012 amendment, by ch. 257, deleted “or guardian” following “parent” twice in the second sentence in the first paragraph.

### **Effective Dates.**

Section 4 of S.L. 1976, ch. 85 declared an emergency. Approved March 10, 1976.

Section 5 of S.L. 1983, ch. 85 declared an emergency. Approved March 28, 1983.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law Residence in Two Districts.**

Where parents of pupils resided in a village in one school district part of the time and on farms in another district part of the time and their children attended school in the village district most of the time, they were residents of the village district, entitled to attend its high school without tuition contribution from the farm district. [Independent Sch. Dist. No. 2 v. Butler, 53 Idaho 187, 22 P.2d 685 \(1933\)](#).

## **RESEARCH REFERENCES**

**A.L.R.** — Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college. [53 A.L.R.3d 641](#).

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college. [56 A.L.R.3d 641](#).

**33-1407. Payment of tuition — Suit to recover payment.** — The board of trustees of any debtor district shall allow and order paid any bill for tuition received by it in proper form, at the first regular meeting following receipt of said bill.

Whenever any school district, or person, liable for the payment of tuition, shall fail or refuse to pay the same after payment thereof is due, the creditor district may commence suit against such district or person in the district court in and for the county in which such district maintains its administrative offices, or in which such person resides.

**History.**

1963, ch. 13, § 78, p. 27.

## JUDICIAL DECISIONS

### Decisions Under Prior Law Analysis

[Liability for tuition.](#)

[Recovery of tuition.](#)

**[Liability for Tuition.](#)**

The Idaho statutes contemplated that tuition should be paid for a nonresident pupil and the mere change of the physical presence of the pupil from living in one district to living in another, without lawful change of residence, did not avoid provisions for payment of tuition. [Smith v. Binford](#), 44 Idaho 244, 256 P. 366 (1927).

**[Recovery of Tuition.](#)**

Under former statute, a county was not prohibited from recovering tuition for school pupils from another county, though the superintendent's certificate was not sent within the prescribed time, since the time was not of the essence of the right to statutory contribution, and statutory provisions concerning timely notice were "directory" and not "mandatory" as to causes of action. [Bingham County v. Bonneville County](#), 63 Idaho 669, 125 P.2d 315 (1942).

**33-1408. Special levy for tuition.** — Any school district is hereby authorized to make a levy above the maintenance and operation levy otherwise authorized by law for the purpose of paying tuition costs of its students who, under authorization of the board of trustees of the district, attend school in another district in Idaho. Such levy shall be exempt from the provisions of section 63-802, Idaho Code.

### **History.**

I.C., § 33-1408, as added by 1981, ch. 235, § 1, p. 475; am. 1983, ch. 237, § 1, p. 642; am. 1996, ch. 208, § 8, p. 658; am. 1996, ch. 322, § 29, p. 1029; am. 2006 (1st E.S.), ch. 1, § 12.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 208, § 8, deleted “, and from the provisions of [section 63-2220, Idaho Code](#)” from the end of the former last sentence, which was deleted in its entirety by ch. 322, § 29, see below.

The 1996 amendment, by ch. 322, § 29, deleted the former last sentence which read, “Any levy made under the provisions of this section shall be exempt from the limitation imposed by [section 63-923\(1\), Idaho Code](#), and from the provisions of [section 63-2220, Idaho Code](#).”

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “in Idaho” for “either in or out of Idaho, except for those costs reimbursed by the state under border contracts” at the end of the first sentence and added the last sentence.

### **Compiler’s Notes.**

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

### **Effective Dates.**

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

Idaho Code Ch. 15

• [Title 33](#) », « [Ch. 15](#) »



## **CHAPTER 15**

### **TRANSPORTATION OF PUPILS**

#### **Section.**

33-1501. Transportation authorized.

33-1502. Bus routes — Non-transportation zones.

33-1503. Payments when transportation not furnished.

33-1504. School buses.

33-1505. Seller's warranty.

33-1506. Inspection of school buses.

33-1507. Liability insurance related to transportation.

33-1508. Operation of school buses.

33-1509. School bus drivers — Definition — Qualification — Duties — Liability.

33-1510. Contracts for transportation service.

33-1511. State board of education — Powers and duties related to transportation.

33-1512. Leasing of school buses.

33-1513. Pupil transportation support program fund.

33-1514. Fee — Reimbursement for pupil transportation costs.

**33-1501. Transportation authorized.** — To afford more equal opportunity for public school attendance, the board of trustees of each district, including specially chartered school districts, shall, where practicable, provide transportation for the public school pupils within the district, and pupils resident within adjoining districts annually agreed to in writing by the districts involved, under conditions and limitations herein set forth. Nonpublic school students may be transported, where practicable, when the full costs for providing such transportation are recovered. In approving the routing of any school bus, or in the maintenance and operation of all such transportation equipment, or in the appointment or employment of chauffeurs, the primary requirements to be observed by the board of trustees are the safety and adequate protection of the health of the pupils. Nothing herein contained shall prevent any board of trustees from denying transportation to any pupil in any school bus operated by or under the authority of said board, upon good cause being given, in writing, to the parents or guardian, or either of them, of such pupil.

No board of trustees shall be required to provide transportation for any pupil living less than one and one-half (1 ½) miles from the nearest appropriate school. A board of trustees may require pupils who live less than one and one-half (1 ½) miles from the nearest established bus stop to walk or provide their own transportation to such bus stop. That distance shall be determined by the nearest and best route from the junction of the driveway of the pupil's home and the nearest public road, to the nearest door of the schoolhouse he attends, or to the bus stop, as the case may be. The board may transport any pupil a lesser distance when in its judgment the age or health or safety of the pupil warrants.

A day care center, family day care home, or a group day care facility, as defined in [section 39-1102, Idaho Code](#), may substitute for the student's residence for student transportation to and from school. School districts may not transport students between child care facilities and home. Student transportation between a child care facility and a school will qualify for state reimbursement providing that the child care facility is one and one-half (1 ½) miles or more from the school to which the student is transported.

To effectuate the public policy hereby declared, the board of trustees of any school district may purchase or lease, and maintain and operate school buses and vans, which vans shall not have a seating capacity in excess of fifteen (15) persons; may enter into agreements or contracts for the use of a charter bus or buses; may enter into contracts with individuals, firms, corporations or private carriers; or may make payments to parents or guardians, subject to the limitations herein provided, when transportation is not furnished by the district.

**History.**

1963, ch. 13, § 79, p. 27; am. 1970, ch. 91, § 1, p. 226; am. 1982, ch. 92, § 1, p. 169; am. 1985, ch. 241, § 1, p. 569; am. 1991, ch. 177, § 1, p. 440; am. 1999, ch. 373, § 1, p. 1020.

**STATUTORY NOTES**

**Cross References.**

Transportation support program, § 33-1006.

**JUDICIAL DECISIONS**

Analysis

[Application.](#)

[Constitutionality.](#)

[Safety regulations.](#)

[Application.](#)

Since this section is permissive in nature, it did not impose a mandatory duty upon the district to provide a safety busing program, where facts supported the district court's finding that the busing was provided as a courtesy only, and not for safety purposes, [Rife v. Long, 127 Idaho 841, 908 P.2d 143 \(1995\)](#).

[Constitutionality.](#)

The allocation of state funds to several school districts pursuant to this section (prior to the 1985 amendment), for the purposes of transportation of

the parochial students, the effect of which would be to aid the school was prohibited under the provisions of Idaho Const., Art. IX, § 5. *Epeldi v. Engelking*, 94 Idaho 390, 488 P.2d 860 (1971), cert. denied, 406 U.S. 957, 92 S. Ct. 2058, 32 L. Ed. 2d 343 (1972).

The denial to the students attending parochial schools of equal rights to ride the public buses did not violate the equal protection clause of the Fourteenth Amendment of the United States Constitution. *Epeldi v. Engelking*, 94 Idaho 390, 488 P.2d 860 (1971), cert. denied, 406 U.S. 957, 92 S. Ct. 2058, 32 L. Ed. 2d 343 (1972) (decision prior to 1985 amendment).

### **Safety Regulations.**

The statutory requirements in this chapter and the school district's response to those requirements through the compilation and adoption of safety rules and regulations were intended to impact primarily upon the safety and adequate protection of the health of the pupils in the transportation of school pupils; in short, the safety rules were designed to prevent accidents in the transportation of pupils. *Quincy v. Joint Sch. Dist. No. 41*, 102 Idaho 764, 640 P.2d 304 (1981).

Where uncontroverted evidence indicated that the district provided a convenience shuttle bus program as a courtesy only, the district assumed a duty to provide safe shuttle busing to those who chose to ride, but it did not assume a duty to see that the riders' walk home was a safe one. *Rife v. Long*, 127 Idaho 841, 908 P.2d 143 (1995).

## **RESEARCH REFERENCES**

**A.L.R.** — Constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of school bus service for private school pupils. 41 A.L.R.3d 344.

Nature and extent of transportation that must be furnished under statute requiring free transportation of school pupils. 52 A.L.R.3d 1036.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students. 23 A.L.R.5th 1.

**33-1502. Bus routes — Non-transportation zones.** — The board of trustees of each school district may establish, and alter, bus routes and establish, and alter, non-transportation zones. Such routes and zones shall be determined for each year not later than the regular August meeting of the board; but nothing herein shall be construed as limiting the board in altering such routes or zones when change in the condition of the roads, or in the number of pupils being transported would justify such alteration.

A non-transportation zone shall comprise an area of a school district designated by the board of trustees which is impracticable, by reason of sparsity of pupils, remoteness, or condition of roads, to serve by established bus routes.

Whenever practicable, routes shall be so established that no bus stop shall be more than one and one-half (1 ½) miles from the intersection of the driveway of the home of any pupil otherwise eligible for transportation and the nearest public road; except that no board of trustees shall be required to route school buses or other passenger equipment over any road not maintained as a part of a highway district, county, state or federal highway system, or by the state or national forest service; except, that the primary requirements to be observed by the board of trustees are the safety and adequate protection of the health of the pupils.

**History.**

1963, ch. 13, § 80, p. 27.

**33-1503. Payments when transportation not furnished.** — a. Whenever any pupil lives more than one and one-half (1 ½) miles from any established bus stop or from the school of attendance, as designated by the board of trustees, and such pupil is regularly transported by private vehicle not under contract with the school district, the board may pay to the parent or guardian an amount per month up to ten dollars (\$10.00) per vehicle plus mileage at the current rate established by the state board of examiners for each round trip approved.

b. Whenever in the judgment of the board of trustees any pupil residing within the area of a nontransportation zone, and otherwise eligible to transportation, cannot be transported in any manner herein authorized, the said board may pay to the parent or guardian thereof such amount of the cost incurred by the parent or guardian for the board and lodging of the pupil as may be authorized by the board of trustees.

**History.**

1963, ch. 13, § 81, p. 27; am. 1977, ch. 236, § 1, p. 710; am. 1982, ch. 92, § 2, p. 169; am. 1986, ch. 48, § 1, p. 140; am. 1997, ch. 115, § 1, p. 289.

**STATUTORY NOTES**

**Cross References.**

Mileage rate set by state board of examiners, § 67-2008.

**RESEARCH REFERENCES**

**A.L.R.** — Nature and extent of transportation that must be furnished under statute requiring free transportation of school pupils. 52 A.L.R.3d 1036.

**33-1504. School buses.** — A motor vehicle shall be deemed a “school bus” when it has a seating capacity of more than ten (10) persons and meets the current national and state minimum standards for school bus construction, and is owned and operated by a school district or a common carrier and is used exclusively for transporting pupils, or is owned by a transportation contractor and is used regularly for transporting pupils.

**History.**

1963, ch. 13, § 82, p. 27; am. 1982, ch. 92, § 3, p. 169.

**JUDICIAL DECISIONS**

**Cited in:** Quincy v. Joint Sch. Dist. No. 41, 102 Idaho 764, 640 P.2d 304 (1981).

**33-1505. Seller's warranty.** — All school buses shall at all times conform to standards of construction therefor specified by the state board of education. No contract shall be negotiated or executed for the purchase or sale of any school bus, body, or chassis, where the same is to be used as, or as a part of, a school bus, which said contract would provide for construction standards not in conformity with those specified by the said state board.

Any person selling or offering for sale any school bus, or any body or chassis thereof, shall warrant that such school bus, body or chassis sold or offered for sale is in no respect below the standards of construction prescribed therefor by the state board of education. If, after the sale of any school bus, or any body or chassis, and before the same is placed into operation, an inspection as hereinafter required shall disclose that such equipment is below the said minimum standards, the seller shall, immediately after notification thereof and at his own expense, make such additions or changes as will meet the said minimum standards or, in lieu thereof, the said seller shall refund the full purchase price paid for such equipment by the buyer, and repossess the said equipment.

**History.**

1963, ch. 13, § 83, p. 27.



**33-1506. Inspection of school buses.** — All school buses shall at all times conform to the standards of construction prescribed therefor by the state board of education.

Before any newly acquired school bus is used for transporting pupils it shall be inspected by a duly authorized representative of the state department of education, and if, upon inspection, it conforms to prescribed standards of construction, or such other standards prescribed by law or regulation, it may be used for transporting pupils; otherwise, no such school bus shall be used for that purpose.

The board of trustees of each school district shall provide for an annual inspection of all school buses by district personnel or upon contract at intervals of not more than twelve (12) months. The district, over the signature of the superintendent, shall file with the state department of education its report of inspection of the school buses operated by the authority of the school district. At intervals of not more than sixty (60) days during each school year the board of trustees shall cause inspection to be made of all school buses operating under the authority of the board. In addition, the state department of education shall conduct random, spot inspections of school buses throughout the school year.

Whenever any school bus is found, upon inspection, to be deficient in any of the prescribed standards, or is found in any way to be unsafe or unfit for the transportation of pupils, such vehicle shall be withdrawn from service and shall not be returned to service until the district certifies the necessary repairs have been made.

**History.**

1963, ch. 13, § 84, p. 27; am. 1980, ch. 330, § 1, p. 852; am. 1982, ch. 92, § 4, p. 169; am. 1997, ch. 29, § 1, p. 54.

**33-1507. Liability insurance related to transportation.** — The board of trustees of each school district owning and operating vehicles for the transportation of pupils, and any transportation contractor, shall have in effect at all times for each vehicle so used, insurance purchased from a company or companies licensed to operate in this state, in amounts not lower than the minimums set by the state board of education, indemnifying the insured against claims for any injury to or death of a person(s) arising out of the operation of the school transportation system.

Each school district may purchase and keep in force, insurance in excess of such required minimum amounts; and insurance indemnifying the district, its officers and employees against any tort claims arising out of the operation of its school transportation system.

**History.**

1963, ch. 13, § 85, p. 27; am. 1982, ch. 92, § 5, p. 169.

**STATUTORY NOTES**

**Compiler's Notes.**

The letter “s” in parentheses so appeared in the law as enacted.

**JUDICIAL DECISIONS**

**Decisions Under Prior Law Liability Insurance Coverage.**

The occurrence involved, namely the drowning of a child in a pond on school premises, was not covered by liability insurance which the former section provided had to be carried on each school bus for protection of the pupils, since such drowning did not grow out of the operation of the transportation system. *Anneker v. Quinn-Robbins Co.*, 80 Idaho 1, 323 P.2d 1073 (1958).

**RESEARCH REFERENCES**

**A.L.R.** — Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students. 23  
A.L.R.5th 1.

**33-1508. Operation of school buses.** — (1) All school buses shall at all times be operated in conformity with law and with rules of the Idaho state police and the state board of education.

(2) No school bus shall: (a) Cross any railroad track, or enter or cross any arterial highway without first coming to a full stop. If any such crossing, intersection or access be obscured by trees, buildings or other objects, or because of wind, storm or fog, the school bus driver shall open such windows and doors as will permit him to determine when it is safe to proceed; (b) Be operated at any time for the transportation of pupils by any person who does not have a current commercial driver's license (CDL) as specified in [section 49-105, Idaho Code](#), and the minimum training for bus drivers as prescribed by the state board of education; (c) Be operated at any time in excess of its maximum occupancy as determined by the manufacturer. Occupancy at no time shall exceed three (3) persons in a seat.

### **History.**

1963, ch. 13, § 86, p. 27; am. 1982, ch. 92, § 6, p. 169; am. 1989, ch. 88, § 68, p. 151; am. 2000, ch. 426, § 1, p. 1379; am. 2000, ch. 469, § 81, p. 1450; am. 2005, ch. 88, § 1, p. 305.

## **STATUTORY NOTES**

### **Cross References.**

Commercial driver's license defined, § 49-104.

Idaho state police, § 67-2901 et seq.

### **Amendments.**

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 426, § 1, deleted “and regulations” following “with rules” in subsection 1.; substituted “school bus driver” for “chauffeur” in subdivision 2.a.; and substituted “commercial driver’s

license (CDL) as specified in [section 49-105, Idaho Code](#)” for “chauffeur license” in subdivision 2.b.

The 2000 amendment, by ch. 469, § 81, redesignated former subsections 1. and 2. and subdivisions 2.a. through 2.c. as present subsections (1) and (2) and subdivisions (2)(a) through (2)(c), respectively.

### **Compiler’s Notes.**

The abbreviation enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 70 of S.L. 1989, ch. 88 provided that the act would become effective April 1, 1990.

## **RESEARCH REFERENCES**

**A.L.R.** — Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes. [37 A.L.R.3d 712](#).

**33-1509. School bus drivers — Definition — Qualification — Duties — Liability.** — For the purpose of this chapter, the term “school bus driver” shall mean any person who at any time is operating a school bus while transporting pupils to or from school, or to or from approved school activities.

A board of trustees shall employ school bus drivers only upon prior application in writing, and the board shall require of school bus drivers employed by others who transport pupils of their district under contract the same information required in such written application. Each application shall contain at least the minimum information specified by the state department of education.

Any person employed as a school bus driver shall be over the age of eighteen (18) years, be of good moral character and not addicted to the use of intoxicants or narcotics. School bus drivers shall meet the physical examination standards of the federal motor carrier safety regulations. Provided however, that individuals with insulin-dependent diabetes mellitus, who are otherwise medically qualified under the physical examination standards of the federal motor carrier safety regulations, may request a waiver for this condition from the state department of education. If the applicant meets the requirements as specified in subsections (1) through (7) of this section, the department shall grant a waiver. The department shall notify each applicant and each affected school district of its determination of eligibility with regard to each application for a waiver. An applicant shall:

(1) Document that he has no other disqualifying conditions including diabetes-related complications;

(2) Document that he has had no recurring, two (2) or more, hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five (5) years. A period of one (1) year of demonstrated stability is required following the first episode of hypoglycemia;

(3) Document that he has had no recurrent hypoglycemic reactions requiring the assistance of another person within the past five (5) years. A

period of one (1) year of demonstrated stability is required following the first episode of hypoglycemia;

(4) Document that he has had no recurrent hypoglycemic reactions resulting in impaired cognitive function that occurred without warning symptoms within the past five (5) years. A period of one (1) year of demonstrated stability is required following the first episode of hypoglycemia;

(5) Document that he has been examined by a board-certified or board-eligible endocrinologist who has conducted a complete medical examination. The complete medical examination shall consist of a comprehensive evaluation of the applicant's medical history and current status with a report including the following information:

- (a) The date insulin use began;
- (b) Diabetes diagnosis and disease history;
- (c) Hospitalization records;
- (d) Consultation notes for diagnostic examinations;
- (e) Special studies pertaining to the diabetes;
- (f) Follow-up reports;
- (g) Reports of any hypoglycemic insulin reactions within the last five (5) years;
- (h) Two (2) measures of glycosylated hemoglobin, the first ninety (90) days before the last and current measure;
- (i) Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken; and
- (j) Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;

(6) Submit a signed statement from an examining endocrinologist indicating the following medical determinations:

- (a) The endocrinologist is familiar with the applicant's medical history for the past five (5) years, either through actual treatment over that time

or through consultation with a physician who has treated the applicant during that time;

(b) The applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures which must be followed to monitor and manage the applicant's diabetes and what procedures should be followed if complications arise; and

(c) The applicant has the ability and has demonstrated willingness to properly monitor and manage the applicant's diabetes; and

(7) Submit a separate signed statement from an ophthalmologist or optometrist that the applicant has been examined and that the applicant does not have diabetic retinopathy and meets the vision standard in [49 CFR 391.41\(b\) \(10\)](#), or has been issued a valid medical exemption. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable advancing disease of blood vessels in the retina, known as unstable proliferative diabetic retinopathy.

Before entering upon his duties, each school bus driver shall file with the board of trustees a current health certificate. Subsequent health certificates shall be filed with the frequency required by the federal motor carrier safety regulations. School bus drivers shall be physically able to perform all job-related duties.

Each school bus driver shall at all times possess a valid and appropriate commercial driver's license, including endorsements as specified in [section 49-105, Idaho Code](#), and if applicable, a waiver for insulin-dependent diabetes mellitus issued by the state department of education.

Each school bus driver shall maintain such route books and other records as may be required by the state department of education or by the board of trustees of the school district. The school bus driver shall report any pupil whose behavior is such as may endanger the operation of the vehicle, or who damages the same or any part thereof, or whose language is obscene.

It shall be the duty of each school bus driver to report any condition on, or bordering, his route which constitutes a hazard to the safety of the pupils being transported.



The state department of education shall promulgate rules as necessary for the determination of eligibility and issuance of a waiver to individuals with insulin-dependent diabetes mellitus in accordance with the provisions of this section.

(8) While within the course and scope of his or her duties, a school bus driver shall not be civilly or criminally liable for reasonably acting to aid a rider on the bus whom the school bus driver reasonably believes to be in imminent danger of harm or injury.

**History.**

1963, ch. 13, § 87, p. 27; am. 1982, ch. 92, § 7, p. 169; am. 1985, ch. 107, § 15, p. 191; am. 1989, ch. 88, § 69, p. 151; am. 1993, ch. 56, § 1, p. 153; am. 2000, ch. 426, § 2, p. 1379; am. 2004, ch. 218, § 1, p. 652; am. 2014, ch. 286, § 1, p. 725.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 286, added “Liability” at the end of the section heading and added subsection (8).

**Federal References.**

The federal motor carrier safety regulations referred to in the third introductory paragraph can be found in [49 CFR Parts 301 to 399](#).

**Effective Dates.**

Section 70 of S.L. 1989, ch. 88 provided that the act would become effective April 1, 1990.

**33-1510. Contracts for transportation service.** — (1) All contracts entered into by boards of trustees for the transportation of pupils shall be in writing using the current pupil transportation model contract developed by the state department of education. School districts may attach to the model contract addenda to meet local requirements. School districts shall submit to the state superintendent of public instruction a copy of the pupil transportation contract prior to both parties signing it, for a review of legal requirements and appropriate costs and for final approval. The state superintendent of public instruction shall respond to the school district within twenty-one (21) calendar days of the postmarked receipt of the contract by notifying the school district of contract approval or of recommended or required changes. A school district may appeal to the state board of education any changes the state superintendent requires, in which case the state board may, upon review, approve the contract without such changes.

(2) No contract shall be executed covering a period of time exceeding five (5) years. School districts shall advertise, bid and contract for all bus transportation service routes at a single time, and contract with the lowest responsible bidder or bidders meeting the specifications; provided that, one (1) time only, a school district may renew a contract with the current contractor if the board of trustees, after renegotiation with the contractor, determines that the terms are satisfactory to the district. The board of trustees may renew the contract for a term not to exceed five (5) years. Renewal of any contract pursuant to this section shall not be granted unless the provisions of this section were included, in a substantially conforming summary, within the bidding notice, published pursuant to [section 33-601, Idaho Code](#), of the contract.

(3) Before entering into such contracts, the board of trustees shall invite bids by twice giving notice as provided in [section 33-402\(2\), Idaho Code](#), and shall award the contract to the lowest responsible bidder.

### **History.**

1963, ch. 13, § 88, p. 27; am. 1987, ch. 9, § 1, p. 13; am. 1989, ch. 3, § 1, p. 4; am. 1997, ch. 40, § 2, p. 74; am. 1997, ch. 176, § 1, p. 495; am. 2004,

ch. 136, § 1, p. 462; am. 2004, ch. 254, § 1, p. 725; am. 2009, ch. 171, § 6, p. 541; am. 2009, ch. 341, § 49, p. 993; am. 2011, ch. 151, § 18, p. 414.

## **STATUTORY NOTES**

### **Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

This section was amended by two 1997 acts which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 40, § 2, in the last paragraph substituted “twice” for “once” following “shall invite bids by” and added “g.” following “section 33-402”.

The 1997 amendment, by ch. 176, § 1, in first paragraph added the third sentence and in the last paragraph substituted “twice” for “once” following “shall invite bids by”.

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 136, designated the first sentence of the section as subsection (1) and substituted “using the current pupil transportation model contract developed by the state department of education” for “in a form approved by the state superintendent of public instruction” in that sentence, and added the second through fifth sentences of that subsection; designated the former second and third sentences of the section as subsection (2); and designated the last sentence as subsection (3).

The 2004 amendment, by ch. 254, added the proviso at the end of the second sentence compiled in present subsection (2) and added the third and fourth sentences compiled in that subsection.

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 171, updated the section reference in subsection (3).

The 2009 amendment, by ch. 341, updated the section reference in subsection (3).

The 2011 amendment, by ch. 151, updated the section reference in subsection (3).

### **Effective Dates.**

Section 2 of S.L. 2004, ch. 254 declared an emergency. Approved March 23, 2004.

Section 7 of S.L. 2009, ch. 171 declared an emergency. Approved April 15, 2009.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

## **JUDICIAL DECISIONS**

### **Analysis**

[Acceptance of entire bid.](#)

[Lowest responsible bidder.](#)

### **[Acceptance of Entire Bid.](#)**

Where a school district advertised for bids for a pupil transportation contract, where its bid solicitation reserved the right to “accept or reject or select any portion thereof any or all bids and to waive any technicality” and where the bid form had separate lines for bids for each transportation route, the school district properly accepted successful bidder’s entire bid, even when unsuccessful bidder submitted a lower bid on four routes. [Scott v. Buhl Joint Sch. Dist. No. 412, 123 Idaho 779, 852 P.2d 1376 \(1993\).](#)

### **[Lowest Responsible Bidder.](#)**

This section mandates that, once bids are received by the board of trustees, it must award the contract to the lowest bidder, unless the lowest bidder is not a “responsible” bidder. [Scott v. Buhl Joint Sch. Dist. No. 412, 123 Idaho 779, 852 P.2d 1376 \(1993\).](#)

**33-1511. State board of education — Powers and duties related to transportation.** — In addition to powers and duties of the state board of education hereinbefore prescribed, the said state board shall:

(1) Designate a member of its staff as supervisor of school transportation responsible for a school bus driver training program and such program shall provide for a qualified driver trainer for each school district and with such duties as the board may prescribe;

(2) Adopt, publish and distribute, and from time to time as need therefor arises amend, minimum standards for the construction of school buses, the basis of which standards shall be those incorporated in the latest report of the National Conference on School Transportation, which report shall be filed with the Idaho state police;

(3) Approve the form(s) to be used for the inspection of school buses;

(4) Authorize the supervisor of school transportation to conduct any combination of in-depth program reviews, fiscal audits, and reviews of annual reimbursement claims supporting documentation of each school district pupil transportation program at a frequency adequate to ensure compliance with state law, accuracy of data and reimbursement claims, and safety of school buses. Priority for selecting districts for review and audit shall be given to those districts that exceed both the most recent annual state average reimbursable cost per mile and the state average reimbursable cost per rider as calculated by the state department of education, unless the supervisor of school transportation determines otherwise;

(5) Authorize the supervisor of school transportation, based upon results of program reviews, fiscal audits, and spot inspections as set forth in [section 33-1506, Idaho Code](#), to provide to school districts a list of required corrective actions, when necessary;

(6) Require school districts to submit progress reports on those corrective actions developed by the supervisor of school transportation to the state department of education at prescribed intervals until deficiencies are corrected or the corrective actions no longer apply;

(7) Withhold all or a portion of a district's pupil transportation reimbursement funding in instances of noncompliance with the requirements of subsection (6) of this section or [section 33-1506, Idaho Code](#), provided that a district may appeal to the state board of education for reconsideration, in which case the state board of education may reinstate or adjust the withheld funds.

### **History.**

1963, ch. 13, § 89, p. 27; am. 1980, ch. 330, § 2, p. 852; am. 1982, ch. 92, § 8, p. 169; am. 1991, ch. 30, § 4, p. 58; am. 1995, ch. 259, § 1, p. 843; am. 2000, ch. 469, § 82, p. 1450; am. 2004, ch. 135, § 1, p. 461.

## **STATUTORY NOTES**

### **Cross References.**

Idaho state police, § 67-2901 et seq.

### **Compiler's Notes.**

The 15th National Congress on School Transportation was held in Warrensburg, Missouri, May 16 to 20, 2010. The congress produced the National School Transportation Specifications and Procedures (2010 Edition) which were revised at the 16th National Congress, which convened in Des Moines, Iowa, May 17 to 20, 2015, producing the 2015 Edition. The 17th National Congress, addressing a 2020 Edition was scheduled for May 17 to 20, 2020, in Des Moines, Iowa. See <http://www.nasdpts.org/ncstonline>.

The "s" enclosed in parentheses so appeared in the law as enacted.

**33-1512. Leasing of school buses.** — The board of trustees of a school district is hereby authorized to lease school buses. Such leasing agreements may be entered into only when commercial bus transportation is not reasonably available. For any school bus leased, the school district shall charge an amount not less than the school district's current total cost per mile. All revenue in excess of operating costs incurred under the lease received from leasing school buses shall be placed in a fund designated for replacement of school buses.

Whenever any school bus is leased, the lettering designating the vehicle as a school bus shall be covered and concealed and the admonitions to stop while loading and unloading pupils shall not be used in the operation of the vehicle.

**History.**

**I.C., § 33-1512**, as added by 1974, ch. 230, § 1, p. 1587; am. 1976, ch. 167, § 1, p. 617; am. 1982, ch. 92, § 9, p. 169.

**33-1513. Pupil transportation support program fund.** — (1) In order to promote school transportation safety and awareness in Idaho and to help defray costs associated with Idaho's oversight of the statewide pupil transportation support program, there is hereby created in the state treasury the pupil transportation support program fund to which shall be credited:

(a) Moneys as may be provided by law; and

(b) Interest earned on the investment of idle moneys in the fund, which shall be paid to the pupil transportation support program fund.

(2) Moneys in the fund shall be continuously appropriated to the department of education, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund.

(3) Moneys in the fund shall be used only for educational programs promoting school transportation safety and awareness; provided however, the department of education is authorized to retain a portion of the moneys, not to exceed ten percent (10%) of annual revenues, to help defray costs associated with the implementation, administration and oversight of the statewide pupil transportation support program.

#### **History.**

**I.C., § 33-1513**, as added by 2004, ch. 301, § 1, p. 841; am. 2018, ch. 169, § 6, p. 344.

### **STATUTORY NOTES**

#### **Amendments.**

The 2018 amendment, by ch. 169, in subsection (1), rewrote former paragraphs (a) and (b), which read: “(a) Moneys as provided by special license plate program fees pursuant to **section 49-419D, Idaho Code**; and (b) All other moneys as may be provided by law;” as present paragraph (a), and redesignated former paragraph (c) as present paragraph (b).

#### **Compiler's Notes.**



Section 3 of S.L. 2004, ch. 388 also enacted a § 33-1513, which has been redesignated by the compiler as § 33-1514. The redesignation of the section enacted by S.L. 2004, ch. 388 was made permanent by S.L. 2005, ch. 25.

**Effective Dates.**

Section 5 of S.L. 2004, ch. 301 provided that the act should take effect on and after January 1, 2005.

**33-1514. Fee — Reimbursement for pupil transportation costs. —**

The state department of education shall assess an annual fee based on past reimbursement to school districts, to be paid by all school districts claiming reimbursement for pupil transportation costs, to defray the department's actual cost of providing financial reviews of school district pupil transportation records. Such fees shall be treated, and may be claimed as reimbursable pupil transportation costs, pursuant to the provisions of section 33-1006, Idaho Code.

**History.**

I.C., § 33-1513, as added by 2004, ch. 388, § 3, p. 1165; am. and redesign. 2005, ch. 25, § 49, p. 82.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was enacted as § 33-1513 by § 3 of S.L. 2004, ch. 388. It was redesignated as § 33-1514 because another § 33-1513 was enacted by S.L. 2004, ch. 301. The redesignation of the section enacted by S.L. 2004, ch. 388 was made permanent by S.L. 2005, ch. 25.



## **CHAPTER 16**

### **COURSES OF INSTRUCTION**

#### **Section.**

- 33-1601. Instruction in English language.
- 33-1602. United States Constitution — National flag and colors — National anthem — “America” — Citizenship — Civics test.
- 33-1603. Sectarian instruction forbidden.
- 33-1604. Bible reading in public schools.
- 33-1605. Health and physical fitness — Effects of alcohol, tobacco, stimulants and narcotics.
- 33-1606. Arbor day.
- 33-1607. Americanization education of adults.
- 33-1608. Family life and sex education — Legislative policy.
- 33-1609. “Sex education” defined.
- 33-1610. Involvement of parents and community groups.
- 33-1611. Excusing children from instruction in sex education.
- 33-1612. Thorough system of public schools.
- 33-1613. Safe public school facilities required.
- 33-1613A. Expenditures to abate unsafe or unhealthy conditions.
- 33-1614. Reading instruction and intervention.
- 33-1615. Reading assessment.
- 33-1616. Literacy intervention.
- 33-1617. English language learners — Program requirements.
- 33-1618. Assessment exception.
- 33-1619. Virtual education programs.
- 33-1620. Mastery advancement program. [Repealed.]

- 33-1621. Application to participate in program. [Repealed.]
- 33-1622. Program assessment — Student assessment. [Repealed.]
- 33-1623. Student advancement — Dual credit — Early graduation — Mastery advancement scholarship — Residual savings. [Repealed.]
- 33-1624. Rules.
- 33-1625. Youth athletes — Concussion and head injury guidelines and requirements.
- 33-1626. Advanced opportunities. [Repealed.]
- 33-1627. Math initiative.
- 33-1628. Firearms safety education in primary and secondary schools.
- 33-1629. Agricultural and natural resource education programs.
- 33-1630. Elementary and secondary education act flexibility document — State board of and state department of education duties.
- 33-1631. Requirements for harassment, intimidation and bullying information and professional development.
- 33-1632. Mastery-based education.
- 33-1633. Computer science initiative for public schools.
- 33-1634. Computer science.
- 33-1635. Career technical education program quality and workforce readiness incentive program.

**33-1601. Instruction in English language.** — Instruction in all subjects in the public schools, except that required for the teaching of foreign languages, shall be conducted in the English language. Provided, however, that for students where the language spoken in their home is not English, instruction may be given in a language other than English as necessary to allow for the transition of the students to the English language.

**History.**

1963, ch. 13, § 176, p. 27; am. 1980, ch. 140, § 1, p. 305.

**STATUTORY NOTES**

**Cross References.**

Minimum courses prescribed by state board, § 33-118.

**33-1602. United States Constitution — National flag and colors — National anthem — “America” — Citizenship — Civics test. —** (1) Instruction in the Constitution of the United States shall be given in all elementary and secondary schools. The state board of education shall adopt such materials as may be deemed necessary for said purpose and shall also determine the grades in which such instruction shall be given.

(2) Instruction in the proper use, display and history of and respect for the American flag and the national colors shall be given in all elementary and secondary schools. Such instruction shall include the pledge of allegiance to the flag and the words and music of the national anthem and of “America.”

(3) Every school board of trustees shall cause the United States flag to be displayed in every classroom during the school hours of each school day.

(4) Every public school shall offer the pledge of allegiance or the national anthem in grades 1 through 12 at the beginning of each school day.

(5) No pupil shall be compelled, against the pupil’s objections or those of the pupil’s parent or guardian, to recite the pledge of allegiance or to sing the national anthem.

(6) Instruction in citizenship shall be given in all elementary and secondary schools. Citizenship instruction shall include lessons on the role of a citizen in a constitutional republic, how laws are made, how officials are elected, and the importance of voting and of participating in government. Such instruction shall also include the importance of respecting and obeying statutes that are validly and lawfully enacted by the Idaho legislature and the congress of the United States.

(7) Starting with the 2016-2017 school year, all secondary pupils must show they have met the state civics and government standards for such instruction through the successful completion of the civics test, participation in a course in United States government and politics and participation in an associated college credit-bearing examination, or alternate path established by the local school district or charter school that shows the student has met the standards. Assessment of standards shall be

included as part of the course at the secondary level. A school district or public charter school shall document on the pupil's transcript that the pupil has passed the civics test pursuant to this subsection. The school district or governing body of the charter school may determine the method and manner in which to administer the civics test. A pupil may take the civics test, in whole or in part, at any time after enrolling in grade 7 and may repeat the test as often as necessary to pass the test. The applicability of this subsection to a pupil who receives special education services shall be governed by such pupil's individualized education plan. For the purposes of this subsection, "civics test" means the one hundred (100) questions used by officers of the United States citizenship and immigration services as a basis for selecting the questions posed to applicants for naturalization, in order that the applicants can demonstrate a knowledge and understanding of the fundamentals of United States history and the principles and form of United States government, as required by [8 U.S.C. section 1423](#). The state board of education may promulgate rules implementing the provisions of this subsection.

(8) Subject to state-appropriated funds, the state department of education shall make available funding for high quality professional development focused on advanced high school civics or government courses, including those with college credit-bearing civics or government examinations. Allowable expenses include summer institutes offered at different sites throughout the state and workshops to help high school teachers prepare students for success in college-level courses.

### **History.**

1963, ch. 13, § 177, p. 27; am. 1991, ch. 287, § 1, p. 738; am. 2000, ch. 341, § 1, p. 1145; am. 2000, ch. 468, § 1, p. 1449; am. 2014, ch. 97, § 22, p. 265; am. 2015, ch. 293, § 1, p. 1171; am. 2016, ch. 98, § 1, p. 295; am. 2020, ch. 26, § 1, p. 59.

## **STATUTORY NOTES**

### **Cross References.**

State board of education, § 33-101 et seq.

### **Amendments.**



This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 341, § 1, redesignated former subsections a. and b. as present subsections (1) and (2), and added subsection (3)[(6)].

The 2000 amendment, by ch. 468, § 1, redesignated former subsections a. and b. as present subsections (1) and (2), and added subsections (3) through (5).

The 2014 amendment, by ch. 97, corrected an error in the subsection (6) designation caused by the multiple 2000 amendments.

The 2015 amendment, by ch. 293, inserted “— Civics test” in the section heading and added subsection (7).

The 2016 amendment, by ch. 98, inserted the sixth sentence in subsection (7).

The 2020 amendment, by ch. 26, inserted “participation in a course in United States government and politics and participation in an associated college credit-bearing examination” near the middle of the first sentence in subsection (7) and added subsection (8).

### **Federal References.**

Federal flag laws, referred to in subsection (2), are compiled as [4 U.S.C.S. § 1 et seq.](#)

Federal laws as to the national anthem, referred to in subsection (2), are compiled as [36 U.S.C.S. § 301.](#)

### **Effective Dates.**

Section 2 of S.L. 2016, ch. 98 declared an emergency. Approved March 22, 2016.

**33-1603. Sectarian instruction forbidden.** — No sectarian or denominational doctrine shall be taught in the public schools, nor shall any books, tracts, papers or documents of sectarian or denominational character be used therein.

**History.**

1963, ch. 13, § 178, p. 27.

**STATUTORY NOTES**

**Cross References.**

Books of sectarian nature excluded from school library, § 33-512.

Religious tests, qualifications, and teachings prohibited, Idaho **Const., Art. IX, § 6.**

State university, sectarian and partisan instruction forbidden, § 33-2806.

**RESEARCH REFERENCES**

**A.L.R.** — Bible distribution or use in schools — modern cases. **111 A.L.R. Fed. 121.**

**33-1604. Bible reading in public schools.** — Selections from the Bible, to be chosen from a list prepared from time to time by the state board of education, shall be read daily to each occupied classroom in each school district. Such reading shall be without comment or interpretation. Any question by any pupil shall be referred for answer to the pupil's parent or guardian.

**History.**

1963, ch. 13, § 179, p. 27.

**STATUTORY NOTES**

**Cross References.**

Religious tests, qualifications, and teachings prohibited, Idaho [Const., Art. IX, § 6](#).

**JUDICIAL DECISIONS**

**Unconstitutional.**

This statute, providing for daily Bible reading in public schools, is in conflict with the [First and Fourteenth Amendments of the United States Constitution](#) and, hence, is unconstitutional, invalid and unenforceable. [Adams v. Engelking, 232 F. Supp. 666 \(D. Idaho 1964\)](#).

**RESEARCH REFERENCES**

**A.L.R.** — Bible distribution or use in public schools — modern cases. [111 A.L.R. Fed. 121](#).

**33-1605. Health and physical fitness — Effects of alcohol, tobacco, stimulants and narcotics.** — In all school districts there shall be instruction in health and physical fitness, including effects of alcohol, stimulants, tobacco and narcotics on the human system. The state board of education shall cause to be prepared such study guides, materials and reference lists as it may deem necessary to make effective the provisions of this section.

**History.**

1963, ch. 13, § 180, p. 27.

**JUDICIAL DECISIONS**

**Cited in:** Gano v. School Dist. No. 411, 674 F. Supp. 796 (D. Idaho 1987).

**33-1606. Arbor day.** — A day during the month of April in each year, designated as Arbor Day, shall be observed by such exercises as will encourage the planting, preservation and protection of trees and shrubs.

**History.**

1963, ch. 13, § 181, p. 27.

**STATUTORY NOTES**

**Cross References.**

School holidays, § 33-512.

**33-1607. Americanization education of adults.** — The board of trustees of any school district is authorized to provide instruction for Americanization of adult residents of the state, including classes in reading, writing and speaking the English language; the principles of the Constitution of the United States, American history, and such other subjects as deemed desirable for making, of such adults, better American citizens. The expense of such instruction shall be a lawful charge against the maintenance and operation funds of the district.

**History.**

1963, ch. 13, § 182, p. 27.

**33-1608. Family life and sex education — Legislative policy.** — The legislature of the state of Idaho believes that the primary responsibility for family life and sex education, including moral responsibility, rests upon the home and the church and the schools can only complement and supplement those standards which are established in the family. The decision as to whether or not any program in family life and sex education is to be introduced in the schools is a matter for determination at the local district level by the local school board of duly selected representatives of the people of the community. If such program is adopted, the legislature believes that:

a. Major emphasis in such a program should be to assist the home in giving them the knowledge and appreciation of the important place the family home holds in the social system of our culture, its place in the family and the responsibility which will be there much later when they establish their own families.

b. The program should supplement the work in the home and the church in giving youth the scientific, physiological information for understanding sex and its relation to the miracle of life, including knowledge of the power of the sex drive and the necessity of controlling that drive by self-discipline.

c. The program should focus upon helping youth acquire a background of ideals and standards and attitudes which will be of value to him now and later when he chooses a mate and establishes his own family.

### **History.**

1970, ch. 119, § 1, p. 282.

## **RESEARCH REFERENCES**

**A.L.R.** — Validity of sex education programs in public schools. 82  
**A.L.R.3d** 579.

**33-1609. “Sex education” defined.** — Sex education for the purpose of this act is defined as the study of the anatomy and the physiology of human reproduction.

**History.**

1970, ch. 119, § 2, p. 282.

**STATUTORY NOTES**

**Compiler’s Notes.**

The words “this act” refer to S.L. 1970, Chapter 119, compiled as §§ 33-1608 to 33-1611.



**33-1610. Involvement of parents and community groups.** — School districts shall involve parents and school district community groups in the planning, development, evaluation and revision of any instruction in sex education offered as a part of this new program.

**History.**

1970, ch. 119, § 3, p. 282.

**33-1611. Excusing children from instruction in sex education.** — Any parent or legal guardian who wishes to have his child excused from any planned instruction in sex education may do so upon filing a written request to the school district board of trustees and the board of trustees shall make available the appropriate forms for such request. Alternative educational endeavors shall be provided for those excused.

**History.**

1970, ch. 119, § 4, p. 282.

**33-1612. Thorough system of public schools.** — The constitution of the state of Idaho, section 1, article IX, charges the legislature with the duty to establish and maintain a general, uniform and thorough system of public, free common schools. In fulfillment of this duty, the people of the state of Idaho have long enjoyed the benefits of a public school system, supported by the legislature, which has recognized the value of education to the children of this state.

In continuing recognition of the fundamental duty established by the constitution, the legislature finds it in the public interest to define thoroughness and thereby establish the basic assumptions which govern provision of a thorough system of public schools.

A thorough system of public schools in Idaho is one in which: 1. A safe environment conducive to learning is provided; 2. Educators are empowered to maintain classroom discipline; 3. The basic values of honesty, self-discipline, unselfishness, respect for authority and the central importance of work are emphasized; 4. The skills necessary to communicate effectively are taught; 5. A basic curriculum necessary to enable students to enter academic or professional-technical postsecondary educational programs is provided; 6. The skills necessary for students to enter the work force are taught; 7. The students are introduced to current technology; and 8. The importance of students acquiring the skills to enable them to be responsible citizens of their homes, schools and communities is emphasized.

The state board shall adopt rules, pursuant to the provisions of chapter 52, title 67, Idaho Code, and **section 33-105(3), Idaho Code**, to establish a thorough system of public schools with uniformity as required by the constitution, but shall not otherwise impinge upon the authority of the board of trustees of the school districts. Authority to govern the school district, vested in the board of trustees of the school district, not delegated to the state board, is reserved to the board of trustees. Fulfillment of the expectations of a thorough system of public schools will continue to depend upon the vigilance of district patrons, the dedication of school trustees and

educators, the responsiveness of state rules, and meaningful oversight by the legislature.

### **History.**

[I.C., § 33-1612](#), as added by 1994, ch. 25, § 1, p. 38; am. 1999, ch. 329, § 4, p. 852.

## **STATUTORY NOTES**

### **Legislative Intent.**

Section 1 of S.L. 1994, ch. 448, provided, in part: “All rules for the public schools of the state board of education, [IDAPA 08.02](#), chapters 01 through 07, that were in effect as of April 1, 1994, that are not otherwise repealed by the state board of education or the legislature, shall be null and void effective April 1, 1996.

“It is the intent of the legislature that the state board of education shall undertake a complete evaluation of all rules relating to the public schools to determine whether and how those rules promote a thorough system of education as described in [section 33-1612, Idaho Code](#), (1994 Senate Bill 1291) and shall draft and promulgate new rules if necessary and consistent with a thorough system of education.”

## **JUDICIAL DECISIONS**

### **Duty of Legislature.**

The legislature is required to provide a means for school districts to fund facilities that provide a safe environment conducive to learning. [Idaho Sch. for Equal Educ. Opportunity v. State](#), 132 Idaho 559, 976 P.2d 913 (1999).

**33-1613. Safe public school facilities required.** — (1) Definition. As used in this section, “public school facilities” means the physical plant of improved or unimproved real property owned or operated by a school district, a charter school, or a school for children in any grades kindergarten through twelve (12) that is operated by the state of Idaho, including school buildings, administration buildings, playgrounds, athletic fields, etc., used by schoolchildren or school personnel in the normal course of providing a general, uniform and thorough system of public, free common schools, but does not include areas, buildings or parts of buildings closed from or not used in the normal course of providing a general, uniform and thorough system of public, free common schools. The aspects of a safe environment conducive to learning as provided by section 33-1612, Idaho Code, that pertain to the physical plant used to provide a general, uniform and thorough system of public, free common schools are hereby defined as those necessary to comply with the safety and health requirements set forth in this section.

(2) Inspection. It is the duty of the board of trustees of every school district and the governing body for other schools described in subsection (1) of this section at least once in every school year to require an independent inspection of the school district’s or other entity’s school facilities to determine whether those school facilities comply with codes addressing safety and health standards for facilities, including electrical, plumbing, mechanical, elevator, fire safety, boiler safety, life safety, structural, snow loading, and sanitary codes, adopted by or pursuant to the Idaho uniform school building safety act, chapter 80, title 39, Idaho Code, adopted by the state fire marshal, adopted by generally applicable local ordinances, or adopted by rule of the state board of education and applicable to school facilities. The inspection shall be done pursuant to chapter 80, title 39, Idaho Code, or by an independent inspector professionally qualified to conduct inspections under the applicable code. The results of the inspection shall be presented to the administrator of the division of building safety and the board of trustees or other governing body for its review and consideration.

(3) Abatement required — Reporting. The board of trustees or other governing body shall require that the unsafe or unhealthy conditions be abated and shall instruct the school district's or other entity's personnel to take necessary steps to abate unsafe or unhealthy conditions. The board of trustees or other governing body must issue a report in the same school year in which the inspections are made declaring whether any unsafe or unhealthy conditions identified have not been abated. The state board of education shall, by rule, provide for uniform reporting of unsafe and unhealthy conditions and for uniform reporting of abatement or absence of abatement of unsafe and unhealthy conditions. Copies of such reports shall be provided to the administrator of the division of building safety and the board of trustees of the school district.

(4) Costs of and plan of abatement. If the school district or other entity described in subsection (1) of this section can abate all unsafe or unhealthy conditions identified with the funds available to the school district or other entity, it shall do so, and it need not separately account for the costs of abatement nor segregate funds expended for abatement. If the school district or other entity cannot abate all unsafe or unhealthy conditions identified with the funds available to it, the board of trustees or other governing body shall direct that a plan of abatement be prepared. The plan of abatement shall provide a timetable that shall begin no later than the following school year and that shall provide for abatement with all deliberate speed of unsafe and unhealthy conditions identified. The abatement plan shall be submitted to the administrator of the division of building safety. The school district or other entity shall immediately begin to implement its plan of abatement and must separately account for its costs of abatement of unsafe and unhealthy conditions and separately segregate funds for the abatement of unsafe and unhealthy conditions as required by subsection (5) of this section.

(5) Special provisions for implementation of plan of abatement.

(a) Notwithstanding any other provisions of law concerning expenditure of lottery moneys distributed to the school district or other entity, all lottery moneys provided to the school district or other entity for a school year in which the school district cannot abate unsafe or unhealthy conditions identified and not legally encumbered to other uses at the time and all lottery moneys for following school years shall be segregated and

expended exclusively for abatement of unsafe and unhealthy conditions identified until all of the unhealthy and unsafe conditions identified are abated, provided, if the school district has obtained a loan from the [school] safety and health revolving loan and grant fund, the provisions of [section 33-1017, Idaho Code](#), and the conditions of the loan shall determine the use of the school district's lottery moneys during the term of the loan.

(b) If the lottery moneys referred to in paragraph (a) of this subsection will, in the board of trustees' or other governing bodies' estimation, be insufficient to abate the unsafe and unhealthy conditions identified, the plan of abatement shall identify additional sources of funds to complete the abatement of the unsafe and unhealthy conditions. The board of trustees may choose from among the following sources, or from other sources of its own identification, but the plan of abatement must identify sufficient sources of funds for abatement.

(i) If the school district is not levying under chapter 8, title 33, Idaho Code, at the maximum levies allowed by law for levies that may be imposed by a board of trustees without an election, the board of trustees may increase any of those levies as allowed by law for the school year following the school year in which it was unable to abate unsafe or unhealthy conditions identified.

(ii) If the school district is levying under chapter 8, title 33, Idaho Code, at the maximum levies allowed by law for levies that may be imposed by the board of trustees without an election; or, if after increasing those levies to the maximum levies allowed by law for levies that may be imposed by the board of trustees without an election, there will still be insufficient funds to abate unsafe or unhealthy conditions identified, the school district, after giving notice and conducting a hearing, may declare a financial emergency and/or may apply for a loan or, if eligible, an interest grant from the [school] safety and health revolving loan and grant fund as provided in [section 33-1017, Idaho Code](#), to obtain funds to abate the unsafe or unhealthy conditions identified.

(iii) Upon the declaration of a financial emergency, the board of trustees shall have the power to impose a reduction in force, to freeze

some or all salaries in the school district, and/or to suspend some or all contracts that may be legally suspended upon the declaration of a financial emergency; provided, that when a board of trustees declares a financial emergency, or when a declaration of a financial emergency is imposed by the state treasurer pursuant to [section 33-1017, Idaho Code](#), and there is a reduction in force, some or all salaries are frozen, or some contracts are suspended, the payments to the school district under the foundation program of chapter 10, title 33, Idaho Code, and in particular the staff allowances under that chapter, shall not be reduced during the duration of the financial emergency as a result of a reduction in force, frozen salaries, or suspended salaries from what the staff allowance would be without the reduction in force, frozen salaries or suspended contracts.

(c) All costs of abatement for a program implementing plans of abatement under subsection (5) of this section must be separately accounted for and documented with regard to abatement of each unsafe or unhealthy condition identified. Funds obtained under [section 33-1017, Idaho Code](#), must be used exclusively to abate unsafe or unhealthy conditions identified. Funds obtained pursuant to [section 33-1017, Idaho Code](#), in excess of funds necessary to abate unsafe or unhealthy conditions identified must be returned as provided in [section 33-1017, Idaho Code](#). Return of these funds shall be judicially enforceable as provided in [section 33-1017, Idaho Code](#).

### **History.**

[I.C., § 33-1613](#), as added by 2000, ch. 219, § 1, p. 607; am. 2001, ch. 326, § 3, p. 1143; am. 2002, ch. 158, § 1, p. 458.

## **STATUTORY NOTES**

### **Cross References.**

Administrator of division of building safety, § 67-2601A.

State fire marshal, § 41-254.

State treasurer, § 67-1201 et seq.

### **Compiler's Notes.**



The word “school” has been added in brackets by the compiler in paragraphs (5)(a) and (5)(b)(ii) to correct the name of the referenced fund. See § 33-1017.

**Effective Dates.**

Section 3 of S.L. 2000, ch. 219 declared an emergency retroactively to January 1, 2000 and approved April 12, 2000.

Section 6 of S.L. 2001, ch. 326 declared an emergency. Approved April 4, 2001.

**33-1613A. Expenditures to abate unsafe or unhealthy conditions. —**

Expenditures to abate unsafe or unhealthy conditions in public school facilities are ordinary and necessary expenses authorized by the general laws of this section within the meaning of section 3, article VIII, of the constitution of the state of Idaho. The general laws of this state authorizing such expenditures include, but are not limited to: the laws relating to expenditures of proceeds of a school district's sale of real or personal property pursuant to chapter 6, title 33, Idaho Code; a school district's collection and expenditure of levies provided by chapter 9, title 33, Idaho Code; a school district's expenditures of state funds provided under the foundation program of chapter 10, title 33, Idaho Code; a school district's expenditures of bond proceeds under chapter 11, title 33, Idaho Code; a school district's expenditures for providing safe transportation pursuant to chapter 15, title 33, Idaho Code; a school district's expenditures of proceeds of loans or grants procured pursuant to section 33-1613, Idaho Code, including previous amendments of section 33-1613, Idaho Code; and a school district's expenditures of forest reserve and mining impact funds pursuant to chapter 13, title 57, Idaho Code. The definitions contained in section 33-1613, Idaho Code, apply to this section.

**History.**

I.C., § 33-1613A, as added by 2003, ch. 270, § 2, p. 721.

**STATUTORY NOTES**

**Effective Dates.**

Section 3 of S.L. 2003, ch. 270 declared an emergency. Approved April 8, 2003.

**33-1614. Reading instruction and intervention.** — (1) It is the ultimate goal of the legislature that every student read at or above grade level by the end of grade 3. School districts shall offer a reading intervention program pursuant to section 33-1616, Idaho Code, to each kindergarten through grade 3 student who exhibits a reading deficiency on the statewide reading assessment pursuant to section 33-1615, Idaho Code, to ensure students can read at or above grade level at the end of grade 3. The reading intervention program shall be provided in addition to core reading instruction that is provided to all students in the general education classroom and must be in alignment with the Idaho comprehensive literacy plan. The reading intervention program shall:

- (a) Be provided to all grade K-3 students identified with a reading deficiency as determined by the statewide reading assessments;
- (b) Provide intensive development in phonemic awareness, phonics, fluency, vocabulary and text comprehension, as applicable to the grade level; and
- (c) Monitor the reading progress of each student's reading skills throughout the school year and adjust instruction according to student needs. Monitoring may include both local and statewide assessments.

(2) Reading Improvement Plan. Any student in kindergarten through grade 3 who exhibits a deficiency in reading at any time based upon the statewide assessment shall receive an individual reading improvement plan no later than thirty (30) days after the identification of the reading deficiency. The reading improvement plan shall be created by the teacher, principal, other pertinent school personnel, including staff-assigned library duties if applicable, and the parent(s) or guardian(s) and shall describe the reading intervention services the student will receive to remedy the reading deficit. Each student must receive intensive reading intervention until the student is determined to be proficient in reading for their grade level.

- (a) Having made a good faith effort, should the school be unable to engage the parent or guardian in the development of the student's reading improvement plan within fifteen (15) days of notifying the parent, the

school may move forward with the creation of the student's reading improvement plan without parental participation.

(b) Any student who has been identified as not proficient through a local literacy assessment may also be put on a reading improvement plan.

(c) Students who are on a reading improvement plan and have been identified through the statewide assessment to be at grade level may be transitioned off of the reading improvement plan. Schools must notify the parents or guardians in advance of transitioning students off of their reading improvement plan.

(3) Parent Notification. The parent of any student in kindergarten through grade 3 who exhibits a deficiency in reading at any time during the school year must be notified in writing of the reading deficiency. The school district shall assist schools with providing written notification to the parent of any student who has not met grade-level proficiency.

(a) The initial notification must include the following:

(i) A statement that his or her student has been identified as having a deficiency in reading and a reading improvement plan will be established by the teacher, principal, other applicable school personnel and the parent(s) or guardian(s);

(ii) A description of the current services that are provided to the student; and

(iii) A description of the available reading intervention and supplemental instructional services and supports that could be provided to the student that are designed to address the identified areas of reading deficiency.

(b) Following development of the plan, the parent will be provided with:

(i) A description of the reading intervention and supplemental instructional services and support that will be provided to the student that are designed to address the identified areas of reading deficiency; and

(ii) Strategies for parents to use at home in helping their student to succeed in reading.

(c) At the conclusion of each school year, or earlier if it has been determined that the student is proficient and is no longer in need of intervention, the parent or guardian will be updated on the student's progress, including any recommendation for placement.

(4) District Annual Reporting. Each school district shall report to the state department of education by October 1 of each year. The report shall contain the following information on the prior school year:

(a) By grade, the number and percentage of all students in grades K-3 performing at the basic or below basic level on local and statewide assessments in reading; and

(b) By grade, the number and percentage of all students in grades K-3 performing at the proficient or higher level on local and statewide assessments in reading.

(5) Department Responsibilities. The state department of education shall annually compile the information required along with state-level summary information and annually report such information to the state board of education, the public, the governor and the legislature. The department shall provide technical assistance as needed to aid school districts in implementing the provisions of this section.

(6) The state board of education may promulgate rules for the administration and implementation of this section.

### **History.**

**I.C., § 33-1614**, as added by 2016, ch. 187, § 3, p. 509.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-1614, Reading assessment, which comprised **I.C., § 33-1614**, as added by S.L. 1999, ch. 295, § 1, p. 743, was repealed by S.L. 2016, ch. 186, § 3, and S.L. 2016, ch. 187, § 2, both effective July 1, 2016.

### **Legislative Intent.**

Section 1 of S.L. 2016, ch. 187 provided: "Legislative Intent. The Legislature recognizes the importance of a comprehensive approach to

ensure that students demonstrate reading proficiency by the end of their third-grade year of education. Reaching this major benchmark requires an important partnership between a parent and a child as the child develops listening and speaking skills in their early years that form the foundation for reading and writing. The greatest impact for ensuring student success in kindergarten through third grade is a productive collaboration among parents, trained teachers and schools. It is paramount that parents are informed about the status of their children's educational progress and that teachers and schools have the resources and support they need to effectively teach reading, assess student achievement, provide intervention when necessary and establish a solid foundation for a student's academic success."

**Compiler's Notes.**

For more on English language arts and literacy, see <https://www.sde.idaho.gov/academic/ela-literacy>.

**33-1615. Reading assessment.** — The state department of education shall be responsible for administration of all assessment efforts and shall train assessment personnel and report results.

(1) In continuing recognition of the critical importance of reading skills, all public school students in kindergarten and grades 1, 2 and 3 shall have their reading skills assessed. For purposes of this assessment, the state board approved research-based “Idaho Comprehensive Literacy Plan” shall be the reference document. The kindergarten assessment shall include reading readiness and phonological awareness. Grades 1, 2 and 3 shall test for fluency, comprehension and accuracy of the student’s reading. The assessment shall be by a single statewide test specified by the state board of education, and the state department of education shall ensure that testing shall take place not less than two (2) times per year in the relevant grades. Additional assessments may be administered to students who are identified for reading interventions as set forth in [section 33-1616, Idaho Code](#). The state K-3 assessment test results shall be reviewed by school personnel for the purpose of providing necessary interventions to sustain or improve the students’ reading skills. Reports shall be submitted by the school districts in such a manner that it is possible to determine for each school building with kindergarten through grade 3 in each school district the percentage of students who are achieving proficiency on the reading assessment. Results shall be maintained and compiled by the state department of education and shall be reported annually to the state board, legislature and governor and made available to the public in a consistent manner, by school and by district.

(2) The assessment scores and interventions recommended and implemented shall be maintained in the permanent record of each student.

(3) The administration of the state K-3 assessments is to be done in the local school districts by individuals chosen by the district other than the regular classroom teacher. All those who administer the assessments shall be trained by the state department of education.

(4) It is legislative intent that curricular materials utilized by school districts for kindergarten through grade 3 shall align with the “Idaho

Comprehensive Literacy Plan.”

**History.**

I.C., § 33-1615, as added by 2016, ch. 186, § 5, p. 498.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-1615, Extended year reading intervention program, which comprised I.C., § 33-1615, as added by SL. 1999, ch. 296, § 1, p. 744, was repealed by S.L. 2016, ch. 186, § 4, effective July 1, 2016.

**Compiler’s Notes.**

For more on English language arts and literacy, see *<https://www.sde.idaho.gov/academic/ela-literacy>*.



**33-1616. Literacy intervention.** — (1) Each school district and public charter school shall establish an extended time literacy intervention program for students who score basic or below basic on the fall reading assessments or alternate reading assessment in kindergarten through grade 3 and submit it to the state board of education.

(2) The program:

(a) Shall provide proven effective research-based substantial intervention and shall include phonemic awareness, decoding intervention, vocabulary, comprehension, and fluency as applicable to the student based on a formative assessment designed to, at a minimum, identify such weaknesses;

(b) May include online or digital instructional materials or programs or library resources and must include parent input and be in alignment with the Idaho comprehensive literacy plan. Online or digital materials that are part of a core literacy program are not required to be approved as described in subsection (3) of this section;

(c) Shall include a minimum of sixty (60) hours of supplemental instruction for students in kindergarten through grade 3 who score below basic on the reading screening assessment; and

(d) Shall include a minimum of thirty (30) hours of supplemental instruction for students in kindergarten through grade 3 who score basic on the reading screening assessment.

(3)(a) The state board of education shall select and approve adaptive learning technology literacy intervention providers through a request for proposals process to provide literacy intervention tools that are adaptive to a child's personalized learning needs for school districts and public charter schools to use as part of their literacy intervention programs for students in kindergarten through grade 3. Such a tool shall:

(i) Be an academic program focused on building age-appropriate literacy skills that, at a minimum, include phonological awareness, phonics, fluency, comprehension, and vocabulary;

- (ii) Use an evidence-based early intervention model; and
  - (iii) Include a parental engagement and involvement component that allows parents to participate in their student's use of the tool at school or at home.
- (b) A tool offered by an approved provider must be evaluated each year to determine effectiveness by an independent external evaluator in order for the provider to remain approved. The evaluation will be based on a full academic year of implementation of tools implemented with fidelity and will include, at a minimum, growth toward proficiency measures. A provider of an intervention tool described in this subsection shall not provide the reading assessment pursuant to [section 33-1615, Idaho Code](#).
- (4) Of the funds appropriated for the purpose of this section, no more than one hundred dollars (\$100) per student may be used for transportation costs.
- (5) For the purpose of program reimbursement, the state department of education shall adopt reporting forms, establish reporting dates, and adopt such additional guidelines and standards as necessary to accomplish the program goals that every child will read fluently and comprehend printed text at grade level by the end of the third grade.
- (6) To ensure students receive high-quality literacy instruction and intervention, the state department of education shall provide professional development to districts and schools on best practices supporting literacy instruction as outlined in the state board of education-approved "Idaho Comprehensive Literacy Plan." Intervention program participation and effectiveness by school and district shall be presented annually to the state board, the legislature, and the governor.
- (7) The state board of education shall promulgate rules implementing the provisions of this section. At a minimum, such rules shall include student trajectory growth to proficiency benchmarks and a timeline for reaching such benchmarks. The state board of education shall also adopt a timeline sufficient to assure that the literacy intervention tool described in subsection (3) of this section is available for school districts and public charter schools to effectively implement for the 2020-2021 school year.

**History.**

I.C., § 33-1616, as added by 2016, ch. 186, § 7, p. 498; am. 2020, ch. 292, § 1, p. 843.

## STATUTORY NOTES

### **Prior Laws.**

Former § 33-1616, Evaluations and interventions, which comprised I.C., § 33-1616, as added by S.L. 2001, ch. 390, § 1, p. 1369; am. S.L. 2002, ch. 303, § 1, p. 866, was repealed by S.L. 2016, ch. 186, § 6, effective July 1, 2016.

### **Amendments.**

The 2020 amendment, by ch. 292, rewrote the section to the extent that a detailed comparison is impracticable, adding present subsection (3).

### **Compiler's Notes.**

For more on English language arts and literacy, see <https://www.sde.idaho.gov/academic/ela-literacy>.

### **Effective Dates.**

Section 2 of S.L. 2020 declared an emergency. Approved March 24, 2020.

**33-1617. English language learners — Program requirements.** — It is legislative intent that the state board of education and state department of education develop statewide, research-based goals for students in Idaho who are English language learners. Goals shall specifically address compliance with applicable state and federal law and court decisions.

The board of trustees of each school district shall formulate a plan in sufficient detail that measurable objectives can be identified and addressed which will accomplish English language acquisition and improved academic performance. Moneys distributed to school districts based upon the population of limited-English proficiency students and distributed to school districts to support programs for students with non-English or limited-English proficiency shall be utilized in support of the district plan.

The district plan and allocation of funds shall be part of a report made annually to the state board of education and state department of education. The state board of education shall provide a summary of these reports to the legislature. Recommendations for program enhancements needed to reach the statewide goals are to be brought to the legislature after review and approval by the state board of education.

**History.**

I.C., § 33-1617, as added by 2004, ch. 349, § 1, p. 1041.

**33-1618. Assessment exception.** — A student who has not been enrolled for two (2) full school years in an elementary or secondary school in the United States and who scores less than a level four (4) on the state assessment used to determine English language proficiency may be excluded from requirements to participate in Idaho's direct writing assessment and in Idaho's direct mathematics assessment if the parent or guardian of such student and the student's teacher agree that such an exclusion is educationally appropriate for the student.

**History.**

I.C., § 33-1618, as added by 2006, ch. 357, § 1, p. 1090.

**STATUTORY NOTES**

**Compiler's Notes.**

For additional information on Idaho literacy and math assessments, see <https://idaho.portal.airast.org/get-started/ela-math.shtml=ro>.

**33-1619. Virtual education programs.** — School districts may offer instruction in the manner described for a virtual school in section 33-5202A, Idaho Code. For programs meeting such definition, the school district may count and report the average daily attendance of the program's students in the manner prescribed in section 33-5208(10), Idaho Code. School districts may also offer instruction that is a blend of virtual and traditional instruction. For such blended programs, the school district may count and report the average daily attendance of the program's students in the manner prescribed in section 33-5208(10), Idaho Code. Alternatively, the school district may count and report the average daily attendance of the blended program's students in the same manner as provided for traditional programs of instruction, for the days or portions of days in which such students attend a physical public school. For the balance of days or portions of days, average daily attendance may be counted in the manner prescribed in section 33-5208(10), Idaho Code.

### **History.**

I.C., § 33-1619, as added by 2009, ch. 340, § 2, p. 983; am. 2012, ch. 188, § 10, p. 495; am. 2013, ch. 342, § 4, p. 900.

## **STATUTORY NOTES**

### **Amendments.**

The 2012 amendment, by ch. 188, substituted “33-5208(8)” for “33-5208(8)(b)” three times in the section.

The 2013 amendment, by ch. 348, updated three references in this section in light of the 2013 amendment of § 33-5208.

### **Effective Dates.**

Section 6 of S.L. 2009, ch. 340 provided that the act should take effect on and after July 1, 2009.

**33-1620. Mastery advancement program. [Repealed.]**

Repealed by S.L. 2015, ch. 58, § 1, effective July 1, 2015. For present comparable provisions, see § 33-4602.

**History.**

**I.C., § 33-1620**, as added by 2010, ch. 275, § 2, p. 713; am. 2013, ch. 35, § 1, p. 76.

**33-1621. Application to participate in program. [Repealed.]**

Repealed by S.L. 2015, ch. 58, § 1, effective July 1, 2015. For present comparable provisions, see § 33-4602.

**History.**

**I.C., § 33-1621**, as added by 2010, ch. 275, § 3, p. 713; am. 2011, ch. 81, § 1, p. 172; am. 2013, ch. 35, § 2, p. 76.



**33-1622. Program assessment — Student assessment. [Repealed.]**

Repealed by S.L. 2015, ch. 58, § 1, effective July 1, 2015. For present comparable provisions, see § 33-4602.

**History.**

I.C., § 33-1622, as added by 2010, ch. 275, § 4, p. 713.

**33-1623. Student advancement — Dual credit — Early graduation — Mastery advancement scholarship — Residual savings. [Repealed.]**

Repealed by S.L. 2015, ch. 58, § 1, effective July 1, 2015. For present comparable provisions, see § 33-4602.

**History.**

**I.C., § 33-1623**, as added by 2010, ch. 275, § 5, p. 713; am. 2014, ch. 262, § 1, p. 653.

**33-1624. Rules.** — The state department of education is hereby directed to promulgate rules to implement the provisions of this act. Such rules may include a requirement that students successfully complete one (1) or more standardized assessments approved by the state department of education. The department shall work with school districts and public charter schools in developing the rules authorized by this section.

**History.**

I.C., § 33-1624, as added by 2010, ch. 275, § 6, p. 713.

**STATUTORY NOTES**

**Legislative Intent.**

Section 1 of S.L. 2010, ch. 275 provided: “Legislative Intent. It is the intent of the Legislature to provide a variety of avenues to help Idaho students succeed in school. The Legislature’s duty to maintain a thorough system of public schools is only strengthened by employing new and innovative approaches to help ensure that more young people successfully complete grades 1-12 curriculum prepared for good-paying careers, postsecondary educational success or both. Idaho’s economic future rests on the ability of an educated workforce to excel in today’s complex and demanding workplace. To help ensure student success, the Legislature believes that a Pilot Program, a revenue neutral Pilot Program, designed to permit students to successfully complete school curriculum at their own accelerated pace, is warranted to study the efficacy of such an approach.”

**Compiler’s Notes.**

The term “this act” in the first sentence refers to S.L. 2010, Chapter 275, which is presently codified only as this section.

Section 7 of S.L. 2010, ch. 275 provided “This act shall be null, void and of no force and effect on and after July 1, 2016.” However, S.L. 2013, ch. 35, § 3 repealed S.L. 2010, ch. 275, § 7, effective July 1, 2013.

**33-1625. Youth athletes — Concussion and head injury guidelines and requirements.** — (1) The state board of education and the Idaho high school activities association shall provide access to appropriate guidelines and information that identify the signs and symptoms of a concussion and head injury and describe the nature and risk of concussion and head injury in accordance with standards of the centers for disease control and prevention through a link on the internet website of the board and the Idaho high school activities association.

(2) This section shall apply to any middle school, junior high school and high school in the state participating in or administering an organized athletic league or sport. For the purposes of this section, “youth athlete” or “athlete” means an individual who is eighteen (18) years of age or younger and who is a participant in any middle school, junior high school or high school athletic league or sport.

(3) At the beginning of each sports season before a youth athlete participates in any organized practice or game, the youth athlete and the youth athlete’s parent or guardian shall receive the guidelines and information described in subsection (1) of this section from the school for which the athlete plays, and shall review the guidelines and information. Coaches, referees, game officials, game judges and athletic trainers shall review such guidelines and information upon employment and biennially thereafter.

(4) Schools shall obtain written consent from the youth athlete’s parent or guardian on an annual basis attesting to the fact that the youth athlete’s parent or guardian has received a copy of the concussion information and guidelines as outlined in subsection (3) of this section, acknowledges the inherent risk and authorizes the youth athlete to participate in athletic activity.

(5) If during a practice or game or competition, it is reasonably suspected that a youth athlete has sustained a concussion or head injury and exhibits outward signs or symptoms of such, as defined by the centers for disease control and prevention, then the youth athlete shall be removed from play. Every Idaho middle school, junior high school and high school that

participates in or offers an organized athletic league shall develop protocol to be followed for removing such athletes from play. Such protocol shall be consistent with concussion and head injury guidelines of the centers for disease control and prevention.

(6) An athlete may be returned to play once the athlete is evaluated and authorized to return by a qualified health care professional who is trained in the evaluation and management of concussions. For the purposes of this section, “qualified health care professional” means and includes any one (1) of the following who is trained in the evaluation and management of concussions:

(a) A physician or physician assistant licensed under chapter 18, title 54, Idaho Code;

(b) An advanced practice nurse licensed under [section 54-1409, Idaho Code](#); or

(c) A licensed health care professional trained in the evaluation and management of concussions who is supervised by a directing physician who is licensed under chapter 18, title 54, Idaho Code.

(7) Students who have sustained a concussion and return to school may need informal or formal accommodations, modifications of curriculum, and monitoring by medical or academic staff until the student is fully recovered. A student athlete should be able to resume all normally scheduled academic activities without restrictions or the need for accommodation prior to receiving authorization to return to play by a qualified health care professional as defined in subsection (6) of this section.

(8) If an individual reasonably acts in accordance with the protocol developed pursuant to subsection (5) of this section, then acting upon such protocol shall not form the basis of a claim for negligence in a civil action.

(9) Any youth sport organization or association in this state may comply with this section. If a youth sport organization or association is in full compliance with this section, then the youth sport organization or association shall be afforded the same protections from liability in a civil action pursuant to subsection (8) of this section.

**History.**

I.C., § 33-1625, as added by 2012, ch. 299, § 2, p. 820; am. 2016, ch. 293, § 1, p. 822.

## STATUTORY NOTES

### **Prior Laws.**

Former § 33-1625, Legislative intent — Youth athletes — Concussion guidelines, which comprised I.C., § 33-1620, as added by 2010, ch. 294, § 1, p. 794; am. and redesign. 2011, ch. 151, § 19, p. 414, was repealed by S.L. 2012, ch. 299, § 1, effective July 1, 2012.

### **Amendments.**

The 2016 amendment, by ch. 293, substituted “biennially” for “biannually” near the end of subsection (3); added subsections (4) and (8); and redesignated the other subsections accordingly.

### **Compiler’s Notes.**

For Idaho high school activities association information on concussions, see <https://idhsaa.org/concussion>.

### **33-1626. Advanced opportunities. [Repealed.]**

Repealed by S.L. 2015, ch. 58, § 2, effective July 1, 2015. For present comparable provisions, see § 33-4602.

#### **History.**

**I.C., § 33-1626**, as added by 2013, ch. 154, § 4, p. 360; am. 2014, ch. 262, § 2, p. 653.

## **STATUTORY NOTES**

#### **Prior Laws.**

Former § 33-1626, which comprised **I.C., § 33-1626**, as added by 2011, ch. 247, § 14, p. 669; am. 2011, ch. 300, § 7, p. 857; am. 2012, ch. 266, § 2, p. 741, was enacted by S.L. 2011, ch. 247, effective April 8, 2011. Session Laws 2011, ch. 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendments by S.L. 2011, ch. 300 and S.L. 2012, ch. 266, became null and void.

Another former § 33-1026, which comprised **I.C., § 33-1626**, as added by 2013, ch. 340, § 7, p. 890, relating to dual credit for early completers, was null and void, effective July 1, 2013.

**33-1627. Math initiative.** — (1) The legislature finds that mathematical skills are increasingly important to the future academic and career success of students. The legislature further finds that student mathematical skills are not currently meeting the needs of Idaho's economy and must be improved. To this end, the state department of education shall promote the improvement of mathematical instruction and student achievement through one (1) or more of the following activities:

- (a) Provide high quality professional development for teachers that is intensive, ongoing and connected to classroom practice, that focuses on student learning, aligns with school improvement priorities and goals, and builds strong working relationships among teachers;
- (b) Provide statewide online mathematical instruction programs that furnish mathematical tutoring, remedial instruction and advanced instruction;
- (c) Provide formative assessments to assist teachers in identifying student mathematical skill levels, areas of deficiency and areas of advancement.

(2) The cost of math initiative activities provided for in this section shall be paid by the state department of education from moneys appropriated for this program in the educational support program budget.

#### **History.**

**I.C., § 33-1627**, as added by 2014, ch. 255, § 1, p. 645.

### **STATUTORY NOTES**

#### **Cross References.**

Educational support program, § 33-1002.

#### **Compiler's Notes.**

Former § 33-1627, Online courses — Mobile computing devices and teacher training, which comprised **I.C., § 33-1627**, as added by 2011, ch. 247, § 15, p. 669; am. 2012, ch. 266, § 3, p. 741, was made null and void, pursuant to rejection of Proposition 3 on November 6, 2012.



For further information on math assessments, see  
*<https://www.sde.idaho.gov/assessment/isat-math>*.

**33-1628. Firearms safety education in primary and secondary schools.** — The board of trustees of a school district is encouraged to establish and maintain a firearms safety education course for primary and secondary school students. The trustees may adopt an elective course of instruction developed by the department of fish and game, a law enforcement agency, or a national firearms association as its firearms safety education course. Instructors from the department of fish and game, a law enforcement agency or a national firearms association, or a person recognized by the trustees as having expertise in firearms safety education may provide the course instruction.

**History.**

I.C., § 33-1628, as added by 2018, ch. 250, § 1, p. 580.

**STATUTORY NOTES**

**Cross References.**

Department of fish and game, § 36-101 et seq.

**Prior Laws.**

Former § 33-1628, “8 in 6 program”, which comprised I.C., § 33-1628, as added by 2012, ch. 197, § 2, p. 529; am. 2013, ch. 154, § 5, p. 360; am. 2014, ch. 262, § 3, p. 653, was repealed by S.L. 2015, ch. 58, § 3, effective July 1, 2015. For present comparable provisions, see § 33-4602.

**33-1629. Agricultural and natural resource education programs. —**

**(1) Idaho Quality Program Standards Incentive Grants.**

(a) The board for career technical education shall adopt and implement Idaho quality program standards for agricultural and natural resource education programs offered in any grade 9 through 12. Such standards shall apply to the areas of instruction, curriculum development, advisory committees, student development and community development. Such standards shall be used to assess the quality of local programs and to set goals for continued program improvement.

(b) The board for career technical education shall establish and administer an incentive grant program for instructors of agricultural and natural resource education programs offered in any grade 9 through 12 where such programs meet or exceed the applicable Idaho quality program standards as determined by the board. A district may apply to the board, on behalf of an instructor, for a grant provided for in this subsection. The board shall develop an application form and criteria to judge each application for the grant program. Grant awards shall be made by the board to instructors of programs that meet or exceed the criteria established by the board. The maximum amount of an incentive grant as provided for in this section shall be ten thousand dollars (\$10,000).

(c) There is hereby created in the state treasury the quality program standards incentive grant fund, to which shall be credited all moneys both public and private that may be appropriated, allocated, donated, distributed to or otherwise provided for by law. Moneys in the fund shall be used exclusively for incentive grants as provided for in this subsection. Moneys in the fund shall be continuously appropriated for the purposes of this incentive grant program. All idle moneys in the fund shall be invested by the state treasurer in a like manner as provided for in [section 67-1210, Idaho Code](#), with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the fund.

(d) The board for career technical education shall in its annual budget request to the legislature request funding for the grant program provided

for in this section.

(e) The board for career technical education shall adopt rules to implement the grant program established by this subsection.

(2) Agricultural Education Program Start-Up Grants.

(a) The board for career technical education shall establish and administer a start-up grant program for school districts and public charter schools to begin or to re-establish an agricultural and natural resource education program in any grade 9 through 12.

(b) The board shall develop an application form and criteria to judge each application for a start-up grant. Any school district or public charter school may apply for a start-up grant.

(c) There shall be no more than four (4) start-up grants awarded per school year. The maximum award for any one (1) start-up grant shall be twenty-five thousand dollars (\$25,000).

(d) There is hereby created in the state treasury the agricultural and natural resource education program start-up grant fund, to which shall be credited all moneys both public and private that may be appropriated, allocated, donated, distributed to or otherwise provided for by law. Moneys in the fund shall be used exclusively for start-up grants as provided for in this subsection. Moneys in the fund shall be continuously appropriated for the purposes of this start-up grant program. All idle moneys in the fund shall be invested by the state treasurer in a like manner as provided for in [section 67-1210, Idaho Code](#), with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the fund.

(e) The board for career technical education shall in its annual budget request to the legislature request funding for the grant program provided for in this subsection.

(f) The board for career technical education shall adopt rules to implement the grant program established by this subsection.

(3) The provisions of this section shall apply to agricultural and natural resource education programs provided for in grades 9 through 12.

**History.**

I.C., § 33-1629, as added by 2014, ch. 124, § 1, p. 354; am. 2015, ch. 244, § 20, p. 1008; am. 2016, ch. 25, § 9, p. 35.

## **STATUTORY NOTES**

### **Cross References.**

Board for professional career education, § 33-2202.

State treasurer, § 67-1201 et seq.

### **Amendments.**

The 2015 amendment, by ch. 244, substituted “board for professional-technical education” for “board of professional-technical education” throughout the section.

The 2016 amendment, by ch. 25, substituted “board for career technical education” for “board for professional-technical education” throughout the section.

**33-1630. Elementary and secondary education act flexibility document — State board of and state department of education duties.**

— (1) The state board of education shall promulgate rules setting forth the provisions of the flexibility document associated with the federal elementary and secondary education act (ESEA). The purpose of the document is to achieve flexibility for state and local education agencies (LEA). Such document shall include testing for grades 3 through 8 and once in high school at the minimum. Such document shall include the following:

- (a) A testing schedule for pupils in grade 11 who shall take a college or career ready assessment;
- (b) A provision stating that LEAs may conduct additional formative or pre-and post-testing as needed;
- (c) A provision stating that federal testing requirements may be used as graduation criteria;
- (d) A provision stating that the state education agency will select an appropriate statewide test based on, at a minimum, such elements as adherence to Idaho's content standards for learning, cost and duration or type, i.e., written or computer adaptive; and
- (e) A provision for maintenance of a statewide learning management system of reporting for the support of LEAs that maximizes communication, collaboration and mastery of academic content. Reporting in this section is intended to satisfy the minimum federal requirements of the consolidated state performance report (CSPR) and serve as a tool for LEAs to measure individual growth or achievement and system accountability.

(2) The state department of education shall begin to review the Idaho's standards for learning of math and English language arts (ELA) in 2015. Idaho's content standards of learning are intended to reinforce our commitment to maintaining a college and career ready standard.

**History.**

I.C., § 33-1630, as added by 2015, ch. 315, § 1, p. 1231.

## STATUTORY NOTES

### **Federal References.**

The federal elementary and secondary education act, referred to in the first sentence in subsection (1), is generally codified as **20 USCS § 6301 et seq.**

### **Compiler's Notes.**

Section 1 of S.L. 2015, chapter 68, section 2 of S.L. 2015, chapter 289, and section 1 of S.L. 2015, chapter 315, each enacted a new **section 33-1630, Idaho Code**. Because it was enacted last, the code section enacted by S.L. 2015, Chapter 315 has been kept as § 33-1630. The provisions enacted by S.L. 2015, Chapter 289 had been redesignated, through the use of brackets, as § 33-1631,. That redesignation was made permanent by S.L. 2016, ch. 47, § 16. The provisions enacted by S.L. 2015, Chapter 68 had been redesignated, through the use of brackets, as § 33-1632, That redesignation was made permanent as § 33-1632 by S.L. 2016, ch. 47, § 17.

For additional information on Idaho content of standards, see *<https://www.sde.idaho.gov/academic/standards>*.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

**33-1631. Requirements for harassment, intimidation and bullying information and professional development.** — (1) School districts and charter schools shall undertake reasonable efforts to ensure that information on harassment, intimidation and bullying of students is disseminated annually to all school personnel, parents and students, including an affirmation that school personnel are authorized and expected to intervene or facilitate intervention on behalf of students facing harassment, intimidation or bullying.

(2) School districts and charter schools shall provide ongoing professional development to build skills of all school staff members to prevent, identify and respond to harassment, intimidation and bullying. The state board shall promulgate rules regarding the content of the professional development required by this subsection.

(3) District policies shall include a series of graduated consequences that may include, but are not limited to, referral to counseling, diversion, use of juvenile specialty courts, restorative practices, on-site suspension and expulsion for any student who commits an act of bullying, intimidation, harassment, violence or threats of violence. Guidelines for such policies will be set forth in the rules of the state board.

(4) Annually school districts shall report bullying incidents to the state department of education in a format set forth in rule by the state board. District policy shall designate persons to whom bullying reports are to be made and a procedure for a teacher or other school employee, student, parent, guardian or other person to report or otherwise provide information on bullying activity.

#### **History.**

**I.C., § 33-1630**, as added by 2015, ch. 289, § 2, p. 1161; am. 2016, ch. 47, § 16, p. 98.

### **STATUTORY NOTES**

#### **Amendments.**



The 2016 amendment, by ch. 47, redesignated the section from § 33-1630.

**Compiler's Notes.**

Section 1 of S.L. 2015, chapter 68, section 2 of S.L. 2015, chapter 289, and section 1 of S.L. 2015, chapter 315, each enacted a new **section 33-1630, Idaho Code**. Because it was enacted last, the code section enacted by S.L. 2015, Chapter 315 has been kept as § 33-1630. The provisions enacted by S.L. 2015, Chapter 289 had been redesignated, through the use of brackets, as § 33-1631. The provisions enacted by S.L. 2015, Chapter 68 had been redesignated, through the use of brackets, as § 33-1632. The redesignation of this section enacted by S.L. 2015, Chapter 289, was made permanent by S.L. 2016, ch. 47, § 16, effective July 1, 2016.

For additional information on bullying in Idaho schools, see <https://www.sde.idaho.gov/academic/standards>.

**33-1632. Mastery-based education.** — (1) The legislature finds that moving toward mastery-based education where students progress as they demonstrate mastery of a subject or grade level is in the best interest of Idaho students. The legislature further finds that moving from the current time-based system to a mastery-based approach will allow for more personalized and differentiated learning; create a focus on explicit, measurable, transferable learning objectives that empower students; and emphasize competencies that include application and knowledge along with skill development.

(2) The state department of education shall perform the following activities to move Idaho toward mastery-based education:

(a) Provide ongoing statewide outreach and communications to increase awareness and understanding of and promote interest in mastery-based education for teachers, administrators, parents, students, business leaders, and policymakers;

(b) Facilitate and maintain the Idaho mastery education network composed of Idaho public school districts and charter schools that collaborate to transition Idaho to mastery-based education. The network shall:

(i) Advise the superintendent of public instruction and the state board of education on the progress of the transition to mastery-based education;

(ii) Develop evidence-based recommendations for continued implementation;

(iii) Implement the policies of the legislature and the state board of education for the transition to mastery-based education; and

(iv) Provide network resources, including professional development, coaching, and best practices, to Idaho public school districts and charter schools; and

(c) Create a sustainability plan for statewide scaling of mastery-based education and ensure that all public school districts and charter schools

participating in the Idaho mastery education network develop plans that describe how the public school district or charter school will maintain a mastery-based approach to education. Plans must include a process to develop the rubrics and assessments necessary to determine mastery and award credit.

(3) The state department of education may expend or distribute moneys appropriated for purposes identified in subsection (2) of this section directly to public school districts and charter schools that are participating in the mastery education network and have applied and been selected to receive mastery-based education grants. The cost of activities provided for in this section shall be paid by the state department of education from moneys appropriated for this program in the educational support program budget as provided for in [section 33-1002, Idaho Code](#).

(4) Any public school district or charter school may participate in the mastery education network by applying to the state department of education, even if such district or school is not selected to receive mastery-based education grants.

(5) No later than January 31 of each year, the state department of education shall report annually to the state board of education and the education committees of the senate and the house of representatives regarding the progress toward implementing mastery-based education.

(6) For purposes of this section:

(a) “Mastery-based education” means an education system where student progress is based on a student’s demonstration of mastery of competencies and content, not seat time or the age or grade level of the student.

(b) “Network” means the Idaho mastery education network.

### **History.**

[I.C., § 33-1630](#), as added by 2015, ch. 68, § 1, p. 183; am. 2016, ch. 45, § 1, p. 95; am. 2016, ch. 47, § 17, p. 98; am. 2019, ch. 189, § 1, p. 600.

## **STATUTORY NOTES**

### **Cross References.**

State board of education, § 33-101 et seq.

Superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 45, redesignated the section from § 33-1630 and added the first sentence in subsection (3).

The 2016 amendment, by ch. 47, redesignated the section from § 33-1630.

The 2019 amendment, by ch. 189, rewrote the section to the extent that a detailed comparison is impracticable.

### **Compiler's Notes.**

Section 1 of S.L. 2015, chapter 68, section 2 of S.L. 2015, chapter 289, and section 1 of S.L. 2015, chapter 315, each enacted a new **section 33-1630, Idaho Code**. Because it was enacted last, the code section enacted by S.L. 2015, Chapter 315 has been kept as § 33-1630. The provisions enacted by S.L. 2015, Chapter 289 had been redesignated, through the use of brackets, as § 33-1631. The provisions enacted by S.L. 2015, Chapter 68, had been redesignated, through the use of brackets, as § 33-1632. The redesignation of this section enacted by S.L. 2015, Chapter 68 was made permanent by S.L. 2016, ch. 45, § 1 and S.L. 2016, ch. 47, § 17, effective July 1, 2016.

For additional information on mastery education in Idaho, see <https://www.sde.idaho.gov/mastery-ed>.

**33-1633. Computer science initiative for public schools.** — (1) As used in this section:

(a) “Blended professional development” means to deliver content and training to teachers and administrators in a combination of online and face-to-face.

(b) “Computer science” means the study of principles, applications and technologies of computing and computers.

(2) The STEM action center, the state board of education and the state department of education shall collaborate to develop and implement a computer science initiative for public schools by:

(a) Adopting computer science content standards in 2016 aligned with nationally recognized computer science education standards with input from Idaho educators and industries for implementation in the 2017-2018 school year;

(b) Providing for professional development in teaching computer science by:

(i) Developing resources for teachers and administrators relating to teaching computational thinking;

(ii) Providing statewide, regional, online and blended professional development opportunities for school district staff;

(iii) Partnering with entities such as the Idaho digital learning academy, public higher education institutions and industry to develop, deliver and provide professional development in computer science for teachers; and

(iv) Distributing grants to school districts and charter schools that may be used to provide incentives for teachers to pursue training in computer science or earn a computer science endorsement;

(c) Maintaining, using and enhancing access to an online portal or repository of instructional resources that:

- (i) Is available for public school districts and public charter schools to use as a resource;
  - (ii) Includes high-quality computer science instructional resources that are designed to teach K-12 students computational thinking skills and are in alignment with the state computer science content standards;
  - (iii) Leverages existing online resources and portals developed by state and governmental entities; and
  - (iv) Allows for collaborative contribution and sharing of resources by teachers, administrators, parents and students;
- (d) Ensuring that the state department of education and the Idaho digital learning academy evaluate providers of comprehensive computer science instructional solutions and provide research, support and guidance on implementing solutions for computer science courses or programs aligned with the state computer science content standards;
- (e) Creating opportunities for schools to partner with local companies to provide for student and teacher mentoring and internships in the computer science field;
- (f) Communicating and supporting computer science initiatives, programs, events, training and other promotions throughout the state for the benefit of school districts, students, parents and local communities; and
- (g) Creating equitable access to computer science resources and programs aligned with the state computer science content standards for teachers, administrators and students throughout the state.
- (3) The STEM action center, the state board of education and the state department of education shall, when economical and beneficial, leverage existing state resources and systems to effectively and efficiently carry out the directives of this computer science initiative for public schools.
- (4) The STEM action center board may select one (1) or more providers through a request for proposals process to provide a comprehensive computer science solution for public school districts and public charter schools to implement.

(5) The STEM action center, the division of career technical education and industry shall collaborate to create technical secondary and postsecondary courses of study in areas related to computer science that meet workforce needs.

(6) The STEM action center shall collaborate with the state board of education, division of career technical education, the state department of education, public higher education institutions and industry to develop a communication plan related to the computer science initiative.

(7) The STEM action center and the state board of education shall provide an annual report to the legislature on the status of this initiative.

### **History.**

I.C., § 33-1633, as added by 2016, ch. 156, § 2, p. 427.

## **STATUTORY NOTES**

### **Cross References.**

Division of career technical education, § 33-2205.

Idaho digital learning academy, § 33-5501 et seq.

STEM action center, § 67-823.

### **Legislative Intent.**

Section 1 of S.L. 2016, ch. 156 provided: “Legislative Intent. The Legislature recognizes that a significant increase in the number of computer science and related technology graduates from the state’s higher education institutions is required over the next several years to advance the intellectual, cultural, social and economic well-being of the state and its citizens. It is essential that efforts to increase computer science instruction, kindergarten through career, be driven by the needs of industry and be developed in partnership with industry and that industry participate in the funding of the state’s computer science education initiatives.”

### **Compiler’s Notes.**

For more information on Idaho computer science content standards, see <https://www.sde.idaho.gov/academic/shared/computer-science/ICS-Computer-Science-Standards.pdf>.

**33-1634. Computer science.** — Starting in fiscal year 2020, each school district, specially chartered district and public charter school serving students in grades 9 through 12 inclusive, or any combination thereof, shall make available to all students in grades 9 through 12 one (1) or more courses in computer science. Students must have the option of taking the course as part of their course schedule during normal instructional hours at the school in which the student is enrolled. Such courses may be offered through virtual education programs and online courses, traditional in-person courses or hybrid courses consisting of a combination of online and in-person instruction. Computer science courses must be aligned with the Idaho content standards for computer science.

**History.**

I.C., § 33-1634, as added by 2018, ch. 239, § 1, p. 562.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 16 of S.L. 2018, chapter 2 and section 1 of S.L. 2018, chapter 239 each enacted a section designated as § 33-1634. Because it was enacted last, the section enacted by S.L. 2018, Chapter 239 has been retained as § 33-1634. The section enacted by S.L. 2018, Chapter 16 had been redesignated through the use of brackets as § 33-1635. The redesignation of the enactment by S.L. 2018, Chapter 16 as § 33-1635 was made permanent by S.L. 2019, ch. 161, § 3.

For more information on Idaho computer science content standards, see <https://www.sde.idaho.gov/academic/shared/computer-science/ICS-Computer-Science-Standards.pdf>.



**33-1635. Career technical education program quality and workforce readiness incentive program.** — (1) It is the ultimate goal of the legislature that every student have access to career technical education courses and programs that lead to workforce readiness certification.

(2) The state board for career technical education shall establish and administer a quality program funding mechanism for high-quality career technical education secondary programs and program technical assistance offered in grades 9 through 12.

(a) Quality program incentive funding will be available to high-performing approved career technical education programs in the areas of business management and marketing, engineering and technology, family and consumer sciences, health sciences, and skilled and technical sciences.

(b) Technical assistance funding will be available to approved career technical education programs in the areas of agriculture and natural resources, business management and marketing, engineering and technology, family and consumer sciences, health sciences, and skilled and technical sciences.

(c) The division of career technical education will develop criteria to evaluate each program and will award funding to those programs that meet or exceed the criteria established by the division for quality program funding and technical assistance funding. Specific criteria will be developed for each type of program. Types of programs will be defined by the state board for career technical education. All eligible career technical programs will be considered for funding. Eligible programs may not be career technical schools and must meet all eligibility criteria developed by the division of career technical education. The amount of each award will be determined each award cycle by the division of career technical education and will be contingent upon the availability of appropriated funds.

(3) Workforce readiness incentive funding.

(a) Eligible career technical education pathway programs in any career technical education program area may receive workforce readiness incentive funds. Workforce readiness incentive funds will be distributed based on the number of secondary career technical concentrators who have demonstrated workforce readiness at the completion of the career technical education program.

(b) The division of career technical education will develop criteria to evaluate each program and will award funding to those programs that meet or exceed the criteria established by the division for quality program funding and technical assistance funding. Specific criteria will be developed for each type of program. Types of programs will be defined by the state board for career technical education. All eligible career technical programs will be considered for funding. Eligible programs may not be career technical schools and must meet all eligibility criteria developed by the division of career technical education. The amount of each award will be determined each award cycle by the division of career technical education and will be contingent upon the availability of appropriated funds.

(4) The state board for career technical education may adopt rules to implement the provisions of this section.

### **History.**

I.C., § 33-1634, as added by 2018, ch. 16, § 3, p. 20; am. 2019, ch. 161, § 3, p. 526.

## **STATUTORY NOTES**

### **Cross References.**

Division of career technical education, § 33-2205.

State board for career technical education, § 33-2202.

### **Amendments.**

The 2019 amendment, by ch. 161, renumbered this section as § 33-1635.

### **Legislative Intent.**

Section 1 of S.L. 2018, ch. 16 provided: “Legislative Intent. The Legislature recognizes the importance of secondary career and technical education courses and programs as opportunities for students to acquire workforce skills and to demonstrate college and career readiness. These education pathways are critical to building the state’s talent pipeline to meet the need for a skilled workforce. To meet these education and workforce needs, the state must build capacity at the secondary level by providing school districts with support to recruit and retain instructors for career and technical education courses, acquire the equipment necessary to deliver those courses and establish student organizations to provide students with workforce experience and guidance on career and postsecondary pathways. The Career and Technical Education Program Quality and Workforce Readiness Incentive Program will encourage school districts to establish, build and maintain career and technical pathways and options for all students.”

### **Compiler’s Notes.**

Section 2 of S.L. 2018, chapter 16 and section 1 of S.L. 2018, chapter 239 each enacted a section designated as § 33-1634. Because it was enacted last, the section enacted by S.L. 2018, Chapter 239 has been retained as § 33-1634. The section enacted by S.L. 2018, Chapter 16 had been redesignated through the use of brackets as § 33-1635. The redesignation of the enactment by S.L. 2018, Chapter 16 as § 33-1635 was made permanent by S.L. 2019, ch. 161, § 3.

For additional information on career and technical education, see <https://www.sde.idaho.gov/academic/curricular>.

### **Effective Dates.**

Section 5 of S.L. 2018, ch. 16 provided: “The provisions of Section 3 of this act [this section] shall be in full force and effect on and after July 1, 2019.”



## **CHAPTER 17**

### **DRIVER TRAINING COURSES**

#### **Section.**

33-1701. Driver training courses.

33-1702. Minimum standards for courses.

33-1703. Eligible pupils — Time courses offered.

33-1704. Authorization to operate program.

33-1705. Two or more districts cooperating.

33-1706. Reports to state department of education.

33-1707. Reimbursement — Determination — Certification.

33-1708. Administration — State supervisor of driver training —  
Employees — Expenses.

**33-1701. Driver training courses.** — In conjunction with its supervision of traffic on public highways, the Idaho transportation department is directed to cooperate with the state board of education in its establishment of driver training courses in the public schools of the state.

**History.**

1963, ch. 13, § 165, p. 27; am. 1992, ch. 115, § 42, p. 345.

**STATUTORY NOTES**

**Cross References.**

Driving businesses, § 54-5401 et seq.

**RESEARCH REFERENCES**

**A.L.R.** — Liability, for personal injury or property damage, for negligence in teaching or supervision of learning driver. **5 A.L.R.3d 271.**

**33-1702. Minimum standards for courses.** — (1) The state board of education and the transportation department shall cooperate in establishing, and amending as need arises, minimum standards for driver training programs reimbursable hereunder.

(2) Such standards shall require not less than thirty (30) clock hours of classroom instruction, six (6) hours observation time in a driver training car, and six (6) hours behind-the-wheel practice driving; but the state board of education may allow in lieu of not more than three (3) hours of such practice driving, such equivalent thereof in simulated practice driving as the said board may have, by uniform rules, approved. The board shall adopt standards necessary to allow completion of the thirty (30) clock hours of required classroom instruction through an approved correspondence course.

**History.**

1963, ch. 13, § 166, p. 27; am. 1994, ch. 347, § 1, p. 1098; am. 1997, ch. 41, § 1, p. 77; am. 1998, ch. 110, § 3, p. 375; am. 2000, ch. 214, § 1, p. 583; am. 2004, ch. 223, § 1, p. 664.

**33-1703. Eligible pupils — Time courses offered.** — Reimbursable programs shall be open to all residents of the state, of the ages fourteen and one-half (14 ½) through twenty-one (21) years whether or not they are enrolled in a public, private or parochial school. Residents living within any school district operating, or participating in the operation of, an authorized driver training program, shall enroll, when possible, in the training program offered in the school district of residence.

No charge or enrollment fee, not required to be paid by public school pupils for driver training, shall be required to be paid by residents not then attending public schools.

Driver training programs herein authorized may, at the discretion of the board of trustees, be conducted after school hours, or on Saturdays, or during regular school vacations.

**History.**

1963, ch. 13, § 167, p. 27; am. 1965, ch. 153, § 1, p. 297; am. 1992, ch. 246, § 1, p. 723; am. 2000, ch. 214, § 2, p. 583.



**33-1704. Authorization to operate program.** — The board of trustees of any school district proposing to establish an authorized driver training program shall, as a condition of reimbursement for costs incurred in the driver training program, not less than thirty (30) days prior to the proposed commencement thereof, submit to the state department of education the plan therefor. The state department shall approve or disapprove such plan within ten (10) days after receipt from the district of the proposal, and shall give written notice of its decision to said board of trustees. Any school district which operates any driver training program without prior written approval from the state department of education shall not be entitled to reimbursement, as provided in section 33-1707, Idaho Code, for the unapproved plan, or the unapproved portions of any plan.

**History.**

1963, ch. 13, § 168, p. 27; am. 1972, ch. 15, § 1, p. 19; am. 1985, ch. 107, § 16, p. 191.

**33-1705. Two or more districts cooperating.** — Two (2) or more school districts may, by written agreement, offer a driver training program jointly. In such case the plan shall be submitted by one (1) of the districts which shall be designated as the operating district; and upon approval of the plan, all reports and apportionments of funds shall be made as though the designated operating district were the only district operating the program. The absence of a written agreement, however, shall not limit the board of trustees of any school district in accepting enrollments in its driver training program on the part of residents in neighboring school districts.

**History.**

1963, ch. 13, § 169, p. 27; am. 1965, ch. 153, § 2, p. 297.

**33-1706. Reports to state department of education.** — Each school district that has completed a course or courses in driver training, whether approved for reimbursement or not, shall submit a report to the state department of education not later than forty-five (45) days after completion of the last course or courses in each fiscal year, showing (1) the number of pupils who enrolled; (2) the number of pupils who completed the course; and (3) the total cost of operation of the program, together with such other information as the state board may require. Failure to submit reports to the state department of education shall be cause for the state department of education to disallow reimbursement even for a prior approved driver training program.

**History.**

1963, ch. 13, § 170, p. 27; am. 1972, ch. 15, § 2, p. 19; am. 1973, ch. 18, § 1, p. 38; am. 1985, ch. 107, § 17, p. 191; am. 2014, ch. 254, § 1, p. 644.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 254, substituted “last course or courses in each fiscal year” for “course or courses” in the first sentence in the section.

### **33-1707. Reimbursement — Determination — Certification. —**

(1)(a) From the data provided by the school district, as required by [section 33-1706, Idaho Code](#), the state department of education shall compute the average of the number of pupils enrolling in the course and those completing the same and determine for such average number the per-pupil cost thereof.

(b) The amount due the district from the driver training account in the state treasury shall be the total cost of operating the program, or the average of the number enrolling in the course and those completing the same, multiplied by one hundred fifty dollars (\$150), whichever is the lesser.

(2) On or before the fifteenth day of February, and the thirtieth day of June, and the fifteenth day of September in each year, the state superintendent of public instruction shall certify to the state controller a list of school districts having submitted the reports required in [section 33-1706, Idaho Code](#), and the amount of money due to each as computed under the provisions of subsection (1) of this section. The state controller shall draw his warrants against the driver training account in the state treasury, in favor of the several districts entitled thereto, in the amount so certified. Annually, no later than the first day of September in each year, the state superintendent of public instruction shall cause the supervisor of driver training to prepare a report listing the names of the school districts having submitted the reports as required in [section 33-1706, Idaho Code](#), and the amounts of money paid each as computed under the provisions of subsection (1) of this section.

#### **History.**

1963, ch. 13, § 171, p. 27; am. 1967, ch. 128, § 1, p. 296; am. 1972, ch. 284, § 1, p. 716; am. 1973, ch. 18, § 2, p. 38; am. 1975, ch. 213, § 1, p. 593; am. 1976, ch. 117, § 1, p. 455; am. 1980, ch. 63, § 1, p. 128; am. 1981, ch. 302, § 1, p. 624; am. 1982, ch. 78, § 1, p. 145; am. 1985, ch. 239, § 1, p. 567; am. 1988, ch. 159, § 1, p. 289; am. 1992, ch. 245, § 1, p. 723; am.

1994, ch. 180, § 46, p. 420; am. 1995, ch. 279, § 1, p. 939; am. 1996, ch. 27, § 1, p. 66; am. 2004, ch. 57, § 1, p. 267; am. 2020, ch. 147, § 1, p. 448.

## **STATUTORY NOTES**

### **Cross References.**

State controller, § 67-1001 et seq.

State superintendent of public instruction, § 67-1501 et seq.

State supervisor of driver training, § 33-1708.

### **Amendments.**

The 2020 amendment, by ch. 147, redesignated the existing provisions and, in present paragraph (1)(b), substituted “driver training account” for “driver training fund” near the beginning and substituted “one hundred fifty dollars (\$150)” for “one hundred twenty-five dollars (125)” near the end.

### **Effective Dates.**

Section 2 of S.L. 1972, ch. 284 provided the act should take effect on and after July 1, 1972.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such amendment was adopted, the amendment to this section by § 46 of S.L. 1994, ch. 180 became effective January 2, 1995.

**33-1708. Administration — State supervisor of driver training — Employees — Expenses.** — The state superintendent of public instruction shall administer the driver training fund [account]. The state board of education shall employ within its department of education a state supervisor of driver training, who shall be a full-time employee, and such other supervisory and clerical help as may be deemed necessary, to effectuate the provisions hereof. The state superintendent of public instruction shall cause to be maintained an accurate, current, and complete record of all costs of administering and supervising the driver training program in the state. Annually, not later than the first day of September, the state superintendent of public instruction shall cause the supervisor of driver training to prepare a report showing the actual expenses incurred in administering and supervising the driver training program during the preceding fiscal year ending June 30.

**History.**

1963, ch. 13, § 172, p. 27; am. 1967, ch. 128, § 2, p. 296; am. 1972, ch. 15, § 3, p. 19; am. 1973, ch. 18, § 3, p. 38; am. 1974, ch. 10, § 10, p. 49; am. 1985, ch. 107, § 18, p. 191.

**STATUTORY NOTES**

**Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

**Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to reflect the correct name of the referenced account. See § 49-308.

**Effective Dates.**

Section 21 of S.L. 1974, ch. 10, provided the act should be in full force and effect on and after July 1, 1974.

Idaho Code Ch. 18

• [Title 33](#) », « [Ch. 18](#) »

## **CHAPTER 18**

### **SAFETY PATROLS**

Section.

33-1801 — 33-1803. [Repealed.]



### **[33-1801. School safety patrols. \[Repealed.\]](#)**

Repealed by S.L. 2017, ch. 60, § 1, effective July 1, 2017. For present comparable provisions, see § 49-652.

#### **History.**

1963, ch. 13, § 173, p. 27.

**§ 33-1802. Purchase of uniforms, equipment, insurance. [Repealed.]**

Repealed by S.L. 2017, ch. 60, § 1, effective July 1, 2017. For present comparable provisions, see § 49-652.

**History.**

1963, ch. 13, § 174, p. 27.

**§ 33-1803. Failure to obey safety patrol member unlawful. [Repealed.]**

Repealed by S.L. 2017, ch. 60, § 1, effective July 1, 2017. For present comparable provisions, see § 49-652.

**History.**

1963, ch. 13, § 175, p. 27.



## **CHAPTER 19**

### **FRATERNITIES — RESTRICTIONS**

Section.

33-1901 — 33-1903. [Repealed.]

**33-1901. Fraternities, sororities, and secret societies prohibited in elementary and secondary schools. [Repealed.]**

Repealed by S.L. 2017, ch. 33, § 1, effective July 1, 2017.

**History.**

1963, ch. 13, § 63, p. 27.

**33-1902. Fraternity, sorority or secret society defined — Exceptions.  
[Repealed.]**

Repealed by S.L. 2017, ch. 33, § 1, effective July 1, 2017.

**History.**

1963, ch. 13, § 64, p. 27.

### **33-1903. Enforcement. [Repealed.]**

Repealed by S.L. 2017, ch. 33, § 1, effective July 1, 2017.

#### **History.**

1963, ch. 13, § 65, p. 27.





## **CHAPTER 20**

### **EDUCATION OF EXCEPTIONAL CHILDREN**

#### **Section.**

33-2001. Definitions.

33-2002. Responsibility of school districts for education of children with disabilities.

33-2002A. [Amended and Redesignated.]

33-2003. Responsibility of school districts for education of gifted/talented children.

33-2004. Contracting by approved form for education by another school district, approved rehabilitation center or hospital, or a corporation.

33-2005. Additional disbursement.

33-2005A. Ancillary personnel — Funding. [Repealed.]

33-2006. Education of certain expectant or delivered mothers. [Repealed.]

33-2007. Cost of instruction and postage subject to reimbursement.

33-2008. Outpatients.

33-2009. Education of children housed in juvenile detention facilities.

33-2010. Education of disabled adult students housed in adult correctional facilities.

**33-2001. Definitions.** — (1) “Ancillary personnel” means those persons who render special services to exceptional children in regular or in addition to regular or special class instruction as defined by the state board of education.

(2) “Children with disabilities” means those children with cognitive impairments, hearing loss, deafness, speech or language impairments, visual impairments, blindness, deaf-blindness, serious emotional disturbance, orthopedic impairments, severe or multiple disabilities, autism, traumatic brain injury, developmental delay or specific learning disabilities, and who by reason of the qualifying disability require special education and related services.

(3) “Exceptional children” means both children with disabilities and gifted/talented children with regard to funding for school districts.

(4) “Gifted/talented children” means those students who are identified as possessing demonstrated or potential abilities that give evidence of high-performing capabilities in intellectual, creative, specific academic or leadership areas, or ability in the performing or visual arts and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.

(5) “Special education” or “special instructional service” means specially designed instruction or a related service, at no cost to the parents, to meet the unique needs of an exceptional child.

### **History.**

I.C., § 2002A, as added by 1965, ch. 228, § 3, p. 542; am. 1974, ch. 127, § 1, p. 1305; am. and redesign. 1991, ch. 323, § 3, p. 839; am. 2010, ch. 235, § 16, p. 542; am. 2020, ch. 12, § 2, p. 19.

## **STATUTORY NOTES**

### **Amendments.**

The 2010 amendment, by ch. 235, added subsection (2) and redesignated former subsection (2) as present subsection (3); and deleted former

subsection (3), which was the definition for “‘Children with disabilities’.”

The 2020 amendment, by ch. 12, substituted “hearing loss” for “hearing impairments” near the beginning of subsection (2).

**Compiler’s Notes.**

This section was formerly compiled as § 33-2002A.

Former section 33-2001 was amended and redesignated as § 33-2002 by § 4 of S.L. 1991, ch. 323.

**33-2002. Responsibility of school districts for education of children with disabilities.** — (1) Each public school district is responsible for and shall provide for the special education and related services of children with disabilities enrolled therein.

(2) Every public school district in the state shall provide instruction and training for persons between the ages of three (3) years and twenty-one (21) years who are children with disabilities as defined in this chapter and by the state board of education. The state board of education shall through its department of education determine eligibility criteria for children with disabilities, qualifications of special teachers and special personnel, programs of instruction and minimum standards for classrooms and equipment to be used in administering the provisions of this act.

(3) The child study team shall assess the importance and necessity of teaching Braille to each child who is legally blind. Preference shall be given to Braille. If the child study team determines that learning Braille is important with respect to a particular child, the child shall be given the opportunity to learn Braille.

(4) In accordance with the provisions of part B of the federal individuals with disabilities education act (IDEA), a student with a disability shall be informed by the school district or other public agency providing education to the student, at least one (1) year before he reaches the age of majority, that rights currently afforded to the parents or guardian of the student pursuant to IDEA, will transfer to the student when he reaches the age of majority. However, such rights shall remain with the parent or guardian after the student reaches the age of majority if the student is determined to be incompetent under Idaho law or if an individualized education program team determines the student lacks the ability to provide informed consent with respect to his educational program.

### **History.**

1963, ch. 13, § 183, p. 27; am. 1963, ch. 219, § 1, p. 628; am. 1965, ch. 228, § 1, p. 542; am. 1972, ch. 312, § 1, p. 774; am. 1974, ch. 10, § 11, p.

49; am. and redesign. 1991, ch. 323, § 4, p. 839; am. 1993, ch. 134, § 1, p. 330; am. 1998, ch. 24, § 1, p. 139.

## STATUTORY NOTES

### Prior Laws.

Former § 33-2002, which comprised 1963, ch. 13, § 184, p. 27; am. 1963, ch. 270, § 1, p. 690; am. 1965, ch. 228, § 2, p. 542, was repealed by S.L. 1991, ch. 323, § 2, effective July 1, 1991.

### Federal References.

Part B of the federal individuals with disabilities act (IDEA), referred to in subsection (4), is codified as [20 USCS § 1411 et seq.](#)

### Compiler's Notes.

This section was formerly compiled as § 33-2001.

The term “this act”, at the end of subsection (2), refers to S.L. 1963, Chapter 219, which is presently compiled only in this section. The reference probably should be to “this chapter,” being chapter 20, title 33, Idaho Code.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

## RESEARCH REFERENCES

**A.L.R.** — What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) ([20 U.S.C.A. §§ 1400 et seq.](#)). [161 A.L.R. Fed. 1.](#)

Availability of damages in action to remedy violations of Individuals with Disabilities Education Act ([20 U.S.C. §§ 1400 et seq.](#)). [165 A.L.R. Fed. 463.](#)

What constitutes reasonable accommodation under federal statutes protecting rights of disabled individual, as regards educational program or school rules as applied to learning disabled student. [166 A.L.R. Fed. 503.](#)

**33-2002A. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section was amended and redesignated as § 33-2001 by § 3 of S.L. 1991, ch. 323.

**33-2003. Responsibility of school districts for education of gifted/talented children.** — Each public school district is responsible for and shall provide for the special instructional needs of gifted/talented children enrolled therein.

Public school districts in the state shall provide instruction and training for children between the ages of five (5) years and eighteen (18) years who are gifted/talented as defined in this chapter and by the state board of education. The state board of education shall, through its department of education, determine eligibility criteria and assist school districts in developing a variety of flexible approaches for instruction and training that may include administrative accommodations, curriculum modification and special programs.

**History.**

**I.C., § 33-2003**, as added by 1991, ch. 323, § 5, p. 839; am. 1993, ch. 409, § 1, p. 1501.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2003, which comprised 1963, ch. 13, § 185, p. 27; am. 1965, ch. 228, § 4, p. 542; am. 1974, ch. 10, § 12, p. 49, was repealed by S.L. 1991, ch. 323, § 2, effective July 1, 1991.

**Effective Dates.**

Section 8 of S.L. 1991, ch. 323 read: “Section 5 of this act shall be in full force and effect on and after July 1, 1993. The remaining sections of this act shall be in full force and effect on and after July 1, 1991.” Approved April 4, 1991.



**33-2004. Contracting by approved form for education by another school district, approved rehabilitation center or hospital, or a corporation.** — The trustees of a school district may contract on a form adopted by the state superintendent of public instruction for the education of exceptional children by another school district or by any private or public rehabilitation center, hospital, corporation, or state agency approved by the state department of education and when the students are transferred from the school district to the institution, corporation or district, said school district shall agree to pay therefor to the institution, corporation or district contracting to educate the students, amounts computed as follows:

1. For each resident student educated by another school district, the amount of the tuition rate certified for the receiving district under the provisions of [section 33-1405, Idaho Code](#);

When public school districts contract for the education of exceptional children residing within the several districts, one (1) district shall be designated as the educating district for the purpose herein.

2. For each resident student educated by contract by a rehabilitation center, hospital, corporation or state agency, the contract amount cannot be greater than the educational costs of the student.

When any rehabilitation center, hospital, corporation or state agency shall have contracted for the education of any exceptional children as defined in this chapter all such children shall be enrolled in the district of their residence; and the institution, hospital or corporation shall certify to the home school district the daily record of attendance of each such pupil. The home district shall be eligible for reimbursement of costs approved by the state superintendent of public instruction as provided in this subsection and in [section 33-1002, Idaho Code](#).

Reimbursement of approved costs shall be part of the district's exceptional child contract allowance and cannot exceed the amount of state support contracted students would generate if they were enrolled in an educational program for which average daily attendance is computed.

**History.**

1963, ch. 13, § 186, p. 27; am. 1965, ch. 228, § 5, p. 542; am. 1972, ch. 25, § 1, p. 30; am. 1974, ch. 127, § 2, p. 1305; am. 1975, ch. 50, § 1, p. 97; am. 1980, ch. 179, § 13, p. 382; am. 1985, ch. 107, § 19, p. 191; am. 1996, ch. 133, § 2, p. 456.

## **STATUTORY NOTES**

### **Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

### **Effective Dates.**

Section 2 of S.L. 1972, ch. 25 provided that the act should take effect on and after July 1, 1972.

**33-2005. Additional disbursement.** — School districts which identify and provide appropriate services to students with serious emotional disturbances at a high incidence level shall be eligible for an additional disbursement from state general funds. The state department of education shall determine the eligibility of school districts and the amount of additional disbursements. This determination shall be made in an equitable fashion and shall be limited by legislative appropriations.

**History.**

I.C., § 33-2005, as added by 1996, ch. 133, § 3, p. 456.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2005, which comprised 1963, ch. 13, § 186A, as added by 1963, ch. 350, § 1, p. 1010; am. 1965, ch. 228, § 6, p. 542; am. 1974, ch. 127, § 3, p. 1305; am. 1980, ch. 179, § 14, p. 382; am. 1991, ch. 323, § 6, p. 839, was repealed by S.L. 1994, ch. 428, § 1, effective July 1, 1994.

**33-2005A. Ancillary personnel — Funding. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 33-2005A**, as added by 1969, ch. 318, § 1, p. 981; am. 1975, ch. 218, § 1, p. 609; am. 1991, ch. 323, § 7, p. 839, was repealed by S.L. 1994, ch. 428, § 1, effective July 1, 1994.

**33-2006. Education of certain expectant or delivered mothers.  
[Repealed.]**

Repealed by S.L. 2017, ch. 45, § 1, effective July 1, 2017.

**History.**

1963, ch. 13, § 186B, as added by 1963, ch. 350, § 1, p. 1010; am. 1965, ch. 228, § 7, p. 542; am. 1969, ch. 163, § 1, p. 496; am. 1972, ch. 42, § 1, p. 65.

**33-2007. Cost of instruction and postage subject to reimbursement.**

— Costs of instruction, including necessary transportation of teachers, shall be subject to reimbursement by the state department of education from state funds. Tuition charged by the University of Idaho and Idaho State College, together with necessary postage on completed lesson material, shall be paid by the school district wherein the maternity home is located, also subject to reimbursement from state funds. Costs of required books and supplies for each course shall be paid by the maternity home.

**History.**

1963, ch. 13, § 186C, as added by 1963, ch. 350, § 1, p. 1010.

**STATUTORY NOTES**

**Cross References.**

Payments from public school income fund, § 33-1009.

**33-2008. Outpatients.** — As to expectant or delivered mothers who are outpatients of a licensed maternity home, the public school district, in which the home is located, shall provide instruction, pursuant to this chapter, for said outpatients.

**History.**

1963, ch. 13, § 186D, as added by 1963, ch. 350, § 1, p. 1010.

**33-2009. Education of children housed in juvenile detention facilities.**

— Every public school district in this state within which is located a detention facility housing juvenile offenders pursuant to court order shall provide, subject to rules of the state board of education, instruction in accredited courses, by a certified instructor, for the juvenile offenders under twenty-one (21) years of age who are housed in the detention facility for juvenile offenders, and shall upon satisfactory completion of required public school courses or correspondence course from a state institution of higher learning in Idaho, issue credits or a diploma evidencing such achievement. Every student served by a public school district pursuant to this section shall be counted as an exceptional child by the district for purposes of state reimbursement.

**History.**

I.C., § 33-2009, as added by 1989, ch. 155, § 20, p. 371; am. 1998, ch. 88, § 9, p. 298.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2009 which comprised I.C., § 33-2009, as added by 1967, ch. 100, § 1, p. 209, was repealed by S.L. 1974, ch. 127, § 4.

**Effective Dates.**

Section 21 of S.L. 1989, ch. 155 provided that the act would become effective January 15, 1990.



**33-2010. Education of disabled adult students housed in adult correctional facilities.** — Any individual eighteen (18) years of age through the semester of school in which the person attains the age of twenty-one (21) years, who is incarcerated in an adult correctional facility shall not be entitled to special education and related services unless such person was identified as a child with a disability or had an individualized education program under part B of the federal individuals with disabilities education act (IDEA) in his last educational placement prior to incarceration.

**History.**

**I.C., § 33-2010**, as added by 1998, ch. 23, § 2, p. 138; am. 2002, ch. 70, § 1, p. 156.

**STATUTORY NOTES**

**Federal References.**

Part B of the federal individuals with disabilities education act (IDEA), referred to in this section, is codified as **20 USCS § 1411 et seq.**

**Compiler's Notes.**

The abbreviation enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 2002, ch. 70 declared an emergency. Approved March 11, 2002.



## **CHAPTER 21**

### **JUNIOR COLLEGES**

#### **Section.**

33-2101. Junior college districts, approvals, boundaries of junior college areas.

33-2101A. Junior college shall mean community college.

33-2102. Courses of study.

33-2103. Minimum requirements for the formation of a junior college district.

33-2104. Formation of community college districts.

33-2104A. Community college trustee zones.

33-2105. Addition of territory to community college districts.

33-2106. Trustees of community college districts.

33-2107. General powers of the board of trustees.

33-2107A. Establishment and operation of third and fourth year college curriculum in community college districts.

33-2107B. Powers granted by preceding section in addition to other powers.

33-2107C. Definition of urban area districts empowered to create upper divisions.

33-2108. Junior college districts public corporations — Sue and be sued — Corporate seal.

33-2109. President — Instructors and other employees — Requirements for admission and graduation — Certificates and diplomas — Textbooks and equipment.

33-2109A. Use of unused sick leave.

33-2109B. Sick leave transferred — Boise State University — College of Western Idaho. [Null and void.]

33-2110. Tuition.

33-2110A. Tuition of out-of-district Idaho students, county taxes and other financial support.

33-2110B. Residency — Rules — Appeal — Standards for in-district, out-of-district and out-of-state students.

33-2111. Taxes and other financial support for community colleges.

33-2112. Additional tax levy for gymnasium and grounds.

33-2113. Capital funds.

33-2114. Reports of junior college districts.

33-2115. Counties, cities, school districts and boards to cooperate.

33-2116. Dormitory housing projects — Student union buildings — Finding and declaration of necessity.

33-2117. Definitions.

33-2118. Creation of dormitory housing commissions.

33-2119. Appointment, qualifications and tenure of commissioners.

33-2120. Interested commissioners or employees.

33-2121. Removal of commissioners.

33-2122. Powers and duties of dormitory housing commissions.

33-2123. Operation not for profit.

33-2124. Planning, zoning and building laws.

33-2125. Bonds.

33-2126. Form and sale of bonds.

33-2127. Provisions of bonds and trust indentures.

33-2128. Remedies of an obligee of commission.

33-2129. Additional remedies conferrable by commission.

33-2130. Construction of powers conferred.

33-2131. Exemption of property from execution sale.

- 33-2132. Aid from federal government.
- 33-2133. Tax exemption.
- 33-2134. Reports.
- 33-2135. Termination — Reactivation.
- 33-2136. Student centers and student union buildings.
- 33-2137. Imposition and collection of student fees and charges.
- 33-2138. Housing commissions validated.
- 33-2139. State community college account created.
- 33-2140. Allocation of fund — Formula. [Repealed.]
- 33-2141. Disbursement of funds — Method — Funds disbursed not considered in fixing tuition.
- 33-2142. Direct payment to board — Utilization.
- 33-2143. Disposition of funds when junior college ceases to operate.
- 33-2144. Disbursement to public employee retirement fund.

**33-2101. Junior college districts, approvals, boundaries of junior college areas.** — Junior college districts may be formed and organized in accordance with the provisions of this chapter, and junior colleges maintained therein shall be intermediate institutions of higher education above grade twelve (12).

To provide for the orderly establishment and growth of junior colleges, a statewide system of six junior college areas is hereby created, as hereafter described. The State Board of Education shall only approve the existence of one centrally located district in any area until the enrollment of such junior college therein exceeds 1000 full time day students a year from within the area.

The boundaries of junior college areas hereby created may be changed by the State Board of Education upon 30 days notice to the boards of trustees of each school district in each of the junior college areas affected and upon public hearing. No change shall be made to place more than one existing junior college in an area. Notice of any boundary change shall forthwith be filed with the board of county commissioners of each county affected.

Area No. 1 shall comprise the territory of the counties of Benewah, Bonner, Boundary, Kootenai and Shoshone.

Area No. 2 shall comprise the territory of the counties of Clearwater, Idaho, Latah, Lewis and Nez Perce.

Area No. 3 shall comprise the territory of the counties of Ada, Adams, Boise, Canyon, Gem, Payette, Valley, Washington, that portion of Elmore County lying generally west of a line described as follows:

Beginning at the junction of the boundary line common to Blaine, Boise, Custer and Elmore counties, thence proceeding in a general southerly direction along the boundaries of Blaine and Elmore counties and Blaine and Camas counties to the northeast corner of Section 1, T. 1 S., R. 11 E., B.M.; thence west 3 miles to the northwest corner of Section 3, same township and range; thence south 4 miles to the southwest corner of Section 22, T. 1 S., R. 11 E., B.M.; thence west a distance of 15 miles more or less to the southwest corner of Section

19, T. 1 S., R. 9 E., B.M.; thence south 2 miles to the southwest corner of Section 31, T. 1 S., R. 9 E., B.M.; thence west a distance of one and three-fourths ( $1 \frac{3}{4}$ ) miles more or less to a point where the south section line of Section 35, T. 1 S., R. 8 E., B.M., intersects Bennett Creek; thence in a southwesterly direction down said Bennett Creek approximately 8 miles more or less to the southwest corner of Section 27, T. 2 S., R. 8 E., B.M.; thence south along the section lines 5 miles to the southwest corner of Section 22, T. 3 S., R. 8 E., B.M.; thence west 3 miles to the northwest corner of Section 30, T. 3 S., R. 8 E., B.M.; thence south along the section lines a distance of 14 miles more or less to the Snake River which is also the boundary between Elmore and Owyhee counties;

and that portion of Owyhee County lying generally west of a line described as follows:

Beginning at the northwest corner of Section 33, T. 5 S., R. 7 E., B.M., which is on the boundary of Elmore and Owyhee counties, thence south along the section lines 7 miles more or less to the southwest corner of Section 33, T. 6 S., R. 7 E., B.M.; thence west to the northwest corner of Section 4, T. 7 S., R. 7 E., B.M.; thence south one and one-half ( $1 \frac{1}{2}$ ) miles more or less to the southwest corner of Section 9, T. 7 S., R. 7 E., B.M.; thence east along the section lines 10 miles more or less to the northeast corner of Section 13, T. 7 S., R. 8 E., B.M.; thence south 4 miles to the southeast corner of Section 36, T. 7 S., R. 8 E., B.M.; thence east twenty-one and one-half ( $21 \frac{1}{2}$ ) miles more or less to the north-south center line of Section 3, T. 8 S., R. 12 E., B.M.; which is also the boundary line of Twin Falls and Owyhee counties; thence south along said boundary lines 36 miles to the township line between Townships 13 South and 14 South, R. 12 E., B.M.; thence west along said township line twenty-seven and one-half ( $27 \frac{1}{2}$ ) miles more or less to the southwest corner of Section 31, T. 13 S., R. 8 E., B.M.; thence south along the section lines 17 miles more or less to the southwest corner of Section 30, T. 16 S., R. 8 E., B.M.; which is also the Nevada State Line.

Area No. 4 shall comprise the territory of the counties of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls, and those

portions of the counties of Elmore and Owyhee not included in the description of Area No. 3.

Area No. 5 shall comprise the territory of the counties of Bannock, Bear Lake, Caribou, Franklin, Oneida, Power, and that portion of Bingham County lying west of a line described as follows:

Beginning at the northeast corner of Section 1, T. 3 N., R. 33 E., B.M.; which is also a point common to Jefferson, Bonneville and Bingham counties; thence due south on the section line a distance of eighteen (18) miles to the southeast corner of Section 36, T. 1 N., R. 33 E., B.M.; thence east on the township line a distance of five and one-half ( $5\frac{1}{2}$ ) miles more or less to the north-south center line of Section 6, T. 1 S., R. 35 E., B.M.; thence south on the center section line a distance of six (6) miles more or less to a point where said center line intersects the east-west section line common to Section 6, T. 2 S., R. 35 E., B.M. and Section 31, T. 1 S., R. 35 E., B.M.; thence east along said section line a distance of five and one-half ( $5\frac{1}{2}$ ) miles more or less to the northeast corner of Section 1, T. 2 S., R. 35 E., B.M.; thence south one and one-half ( $1\frac{1}{2}$ ) miles to the southwest corner of the northwest quarter of Section 7, T. 2 S., R. 36 E., B.M.; thence east six (6) miles more or less to the Range line common to Ranges 36 and 37 E., B.M.; thence south on said Range line two and one-quarter ( $2\frac{1}{4}$ ) miles more or less to its point of intersection with the Blackfoot River; thence following the Blackfoot River in a northeasterly and southeasterly direction to a point where said river intersects the township line common to Bingham and Caribou counties.

Area No. 6 shall comprise the territory of the counties of Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, Teton, and that portion of Bingham County not included in the description of Area No. 5.

### **History.**

1963, ch. 363, § 1, p. 1037; am. 1965, ch. 238, § 1, p. 576.



**33-2101A. Junior college shall mean community college. —** Notwithstanding any other provision of law, in sections 21-805, 21-806, 21-809, 23-404, 31-808, 33-101, 33-107, 33-107B, 33-601, 33-1252, 33-2101, 33-2102, 33-2103, 33-2104, 33-2105, 33-2106, 33-2107, 33-2107A, 33-2107B, 33-2107C, 33-2108, 33-2109A, 33-2110, 33-2110A, 33-2110B, 33-2111, 33-2112, 33-2113, 33-2114, 33-2115, 33-2116, 33-2117, 33-2118, 33-2119, 33-2121, 33-2122, 33-2123, 33-2124, 33-2125, 33-2126, 33-2130, 33-2135, 33-2137, 33-2138, 33-2139, 33-2141, 33-2142, 33-2143, 33-2144, 33-2211, 33-3716, 33-4001, 33-4003, 33-4004, 33-4006, 33-4201, 46-314, 50-1721, 57-1105A, 59-1324, 59-1371, 59-1374, 67-2320, 67-2322 and 67-5332, Idaho Code, the term “junior college” shall mean and shall be denoted as “community college.”

### **History.**

**I.C., § 33-2101A**, as added by 1987, ch. 94, § 1, p. 186; am. 1996, ch. 322, § 30, p. 1029; am. 1997, ch. 275, § 3, p. 813; am. 2000, ch. 285, § 20, p. 908; am. 2001, ch. 331, § 10, p. 1161; am. 2006, ch. 380, § 1, p. 1175; am. 2011, ch. 39, § 3, p. 94; am. 2013, ch. 72, § 10, p. 183.

## **STATUTORY NOTES**

### **Amendments.**

The 2006 amendment, by ch. 380, deleted “67-5309C” preceding “and 67-5332.”

The 2011 amendment, by ch. 39, deleted “33-3717” following “33-3716.”

The 2013 amendment, by ch. 72, deleted “33-4306, 33-4315” from the list of sections.

### **Compiler’s Notes.**

**Section 33-4006, Idaho Code**, referred to near the end of this section, was repealed by S.L. 1987, ch. 39, § 1.

### **Effective Dates.**

Section 4 of S.L. 2011, ch. 39 declared an emergency. Approved March 8, 2011.

Section 11 of S.L. 2013, ch. 72 provided: “Sections 5, 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 [this section] of this act shall be in full force and effect on and after July 1, 2013.”

**33-2102. Courses of study.** — A community college established pursuant to the provisions of this chapter shall give instruction in academic subjects, and in such nonacademic subjects as shall be authorized by its board of trustees.

The academic courses given and the instruction therein shall be of the same standard as the same are given and taught in the first two (2) years of any other state institution of higher education, and credits therefor shall be accepted by other state institutions for credit toward a baccalaureate degree, pursuant to [section 33-3728, Idaho Code](#).

**History.**

1963, ch. 363, § 2, p. 1037; am. 1987, ch. 48, § 2, p. 76; am. 2018, ch. 96, § 1, p. 204.

**STATUTORY NOTES**

**Amendments.**

The 2018 amendment, by ch. 96, added “pursuant to [section 33-3728, Idaho Code](#)” at the end of the last paragraph.

**33-2103. Minimum requirements for the formation of a junior college district.** — A junior college district shall include (a) the area, or any part thereof, of four (4) or more school districts and the area or any part thereof, of one (1) or more counties having an aggregate enrollment in grades nine (9) through twelve (12) during the school year, next preceding the organization of such district, of not less than two thousand (2000) students, and (b) property having market value for assessment purposes as shown by the equalized assessment rolls of real and personal property for the preceding calendar year of not less than one hundred million dollars (\$100,000,000).

The state board of education in considering a petition filed pursuant to [section 33-2104, Idaho Code](#), shall verify all the above requirements, as well as determine the number of the students expected to attend and the facilities available, or to be made available, for operation of the school.

**History.**

1963, ch. 363, § 3, p. 1037; am. 1965, ch. 238, § 2, p. 576; am. 1980, ch. 350, § 13, p. 887.

**33-2104. Formation of community college districts.** — A community college district may be organized by the vote of the school district electors of the proposed district, voting at an election called and held as herein provided:

a. A petition or petitions, signed by not less than one thousand (1,000) qualified electors as defined in [section 34-104, Idaho Code](#), residing in the proposed community college district, giving the name of the proposed community college, describing the boundaries of the proposed district and praying for the organization of the territory therein described as a community college district, together with a true copy thereof, shall be filed with the clerk of the board of county commissioners of the county in which such proposed district is to be located;

b. Said petition or petitions shall be presented to the clerk of the board of county commissioners. An examination to verify whether or not the petition signers are qualified electors shall be conducted by the county clerk as provided in [section 34-1807, Idaho Code](#);

c. In the event the petition is found by the county clerk to contain the required number of signatures, the clerk shall file the original in his office, and forthwith mail the copy thereof to the state board of education for its consideration and recommendation. The state board of education shall consider the existing opportunities for education beyond grade twelve (12) in the proposed district, the number of prospective students for such community college, the financial ability of the proposed district to maintain such college and furnish the standard of education contemplated by this chapter with income from tuition and other sources as herein provided. If the state board approves the establishment of such community college, it shall so advise the board of county commissioners within thirty (30) days after the receipt of such petition or petitions, and recommend that an election be called as herein provided for the organization of such district;

d. Upon receipt by the board of county commissioners of the written approval of the state board of education, the board of county commissioners shall enter an order that a special election be called within the proposed new district for the purpose of voting on the question of the creation of such

district on one (1) of the election dates enumerated in [section 34-106, Idaho Code](#). No notice of election need be posted, but notice shall be published, the election shall be conducted and the returns thereof canvassed as required in chapter 14, title 34, Idaho Code. The ballot shall contain the words “Community College District — Yes” and “Community College District — No,” along with a voting position in which the voter may express his choice. If two-thirds (2/3) of all votes cast be in the affirmative, the board of county commissioners shall enter an order declaring such community college district established, designating its name and boundaries. A certified copy of such order shall forthwith be filed with the state board of education;

e. If the proposed district embraces an area in two (2) or more counties, the county in which it is proposed to locate the community college shall be considered the home county, in which the proceedings for the organization of the district shall be conducted, taken and had. Before calling an election on the creation of the proposed district, the board of county commissioners of the home county shall advise the board or boards of county commissioners of such other county or counties of the proposed election, to the end that a date may be agreed upon and the election be held in all counties affected on the same day. The board of county commissioners in any such other county shall give notice of the election, conduct the same and canvass the returns thereof as though it were the only county in which such election were being held. The returns of the election so canvassed shall be certified promptly to the board of county commissioners of the home county. The result of the election shall in turn be certified by the board of county commissioners of the home county to such board in each county in which the proposed district may lie, and if the result of the election be in the affirmative, a certified copy of the order creating the district shall be filed with the clerk of the board of county commissioners of such other county or counties, and entered into the minutes of the board therein.

### **History.**

1963, ch. 363, § 4, p. 1037; am. 2007, ch. 241, § 1, p. 713.

## **STATUTORY NOTES**

### **Amendments.**

The 2007 amendment, by ch. 241, throughout the section, substituted “community college” for “junior college”; in subsection a., substituted “qualified electors as defined in [section 34-104, Idaho Code](#)” for “school district electors”; rewrote subsection b., which formerly read: “Said petition or petitions shall be verified by at least one (1) school district elector, which verification shall state that affiant knows that all the parties whose names are signed to the petition or petitions have the qualification of school district electors and are residents of the proposed district. The verification may be made before any notary public”; in subsection c., substituted “In the event the petition is found by the county clerk to contain the required number of signatures, the clerk shall file” for “Upon receipt of such petition or petitions the clerk of the board of county commissioners shall file”; and in subsection d., in the first sentence, added “on one (1) of the election dates enumerated in [section 34-106, Idaho Code](#),” in the second sentence, substituted “as required in chapter 14, title 34, Idaho Code” for “as required in elections on the question of consolidation of school districts,” and in the third sentence, substituted “along with a voting position in which the voter may express his choice” for “each followed by a box in which the voter may express his choice by marking a cross ‘X’.”

### **Effective Dates.**

Section 2 of S.L. 2007, ch. 241 declared an emergency and applies to all petitions for formation of a community college district that were initially circulated after the effective date of the act. [Section 33-2104, Idaho Code](#), as it existed one day prior to the effective date of the act shall apply to all petitions for formation of a community college district that were initially circulated prior to the effective date of the act. The election process in Section 1 of the act shall apply to all elections for formation of a community college district held on and after the effective date of the act. Approved March 28, 2007.

**33-2104A. Community college trustee zones.** — (1) Each existing community college district shall be divided into five (5) trustee zones. Each trustee position on the board shall be designated to a zone so that each trustee zone contains one (1) designated trustee position.

(2) The boundaries of the several trustee zones in each existing community college district shall be drawn so that the five (5) zones are as nearly equal in population as practicable. If a community college district is situated within two (2) or more counties, and any one (1) of the counties has sufficient population to warrant at least one (1) zone, then the boundaries of a trustee zone shall be located wholly within the boundaries of such county.

(3) A proposal to redefine the boundaries of trustee zones of a community college district shall be initiated by its board of trustees at the first meeting following the report of the decennial census or following the electors' approval of the addition of territory pursuant to [section 33-2105, Idaho Code](#). The board of trustees shall submit the proposal to the state board of education within one hundred twenty (120) days following the decennial census or election. The proposal shall include a legal description of each proposed trustee zone, a map of the district showing how each proposed trustee zone would appear and the approximate population each zone would have should the proposal to change the boundaries of the trustee zones become effective.

(4) Within sixty (60) days after receipt of a proposal submitted pursuant to subsection (3) of this section, the state board of education may approve or disapprove the proposal to redefine the boundaries of the trustee zones and shall give written notice of its decision to the board of trustees of the district wherein the change is proposed. If the state board of education disapproves a proposal, then it shall provide the board of trustees with a written explanation setting forth its reasons for disapproval. Within forty-five (45) days of receipt of a disapproval, the board of trustees shall submit a revised proposal to the state board of education. If the state board of education approves the proposal, then it shall notify the board of trustees, the trustee zones shall be changed in accordance with the proposal and a copy of the legal description of each trustee zone and map of the district



showing how each trustee zone will appear shall be filed by the board of trustees with the county clerk of the home county.

(5) At the next regular meeting of the board of trustees following the state board's approval of a proposal submitted pursuant to subsection (4) of this section, the community college board of trustees shall appoint from its membership a trustee for each new zone to serve as trustee until that incumbent trustee's term expires. If the current board membership includes two (2) or more incumbent trustees who reside in the same trustee zone, then the following applies:

(a) The position on the board held by the trustee with the greatest amount of time remaining in such trustee's term shall be the position on the board designated to the zone wherein such trustee resides.

(b) If there is no difference in the amount of time remaining in the incumbents' terms, then the position on the board held by the most senior trustee shall be designated to the zone wherein such trustee resides.

(c) If there is no difference in seniority among the incumbents, then a majority vote of the sitting board, excluding the incumbents subject to the vote, shall determine which incumbent trustee shall be designated to the zone wherein such trustees reside and the remaining trustee or trustees shall be designated to the position or positions on the board in the zone or zones wherein no incumbent trustee resides.

(6) Any incumbent trustee whose position on the board has been designated to a zone other than the zone in which such trustee resides may complete their term; however, when the position is next scheduled to be placed on the ballot, only persons residing in the zone to which the position has been designated shall be eligible to run for the position.

(7) Notwithstanding the time requirements set forth in this section, on or before July 1, 2016, the board of trustees of each community college district formed before the effective date of this act shall obtain a state board of education-approved proposal to divide the district into five (5) trustee zones. Trustee terms due for the 2016 election shall be subject to the zoning and board position requirements set forth in this section.

### **History.**

I.C., § 33-2104A, as added by 2016, ch. 193, § 1, p. 538.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The phrase “the effective date of this act” in subsection (7) refers to the effective date of S.L. 2016, Chapter 193, which was effective March 24, 2016.

### **Effective Dates.**

Section 3 of S.L. 2016, ch. 193 declared an emergency. Approved March 24, 2016.

**33-2105. Addition of territory to community college districts.** — Any territory not in an existing community college district may become a part of a community college district by a vote of the school district electors resident of said territory, voting at an election called and held as herein provided.

A petition signed by not less than one hundred (100) school district electors of the territory proposed to be added to the community college district, or twenty percent (20%) of the school district electors within the territory, whichever is the lesser, describing the boundaries of the territory, and a true copy thereof, shall be filed with the board of trustees of the community college district. The board shall forward the original of said petition, with its recommendations, to the state board of education, and a copy thereof to the board of county commissioners of the home county of the community college district. The state board of education shall consider such petition, as it is required to consider a petition for the formation of a community college district. If it approve the petition, notice to that effect shall be given the board of trustees of the community college district and to the board of county commissioners of the home county of the community college district.

When any such petition has been approved by the state board of education, an election shall be held in the manner of elections for the creation of a community college district, except that polling places shall be established only in the territory proposed to be added to the district. The question shall be deemed approved only if a majority of the votes cast in the territory were cast in favor of the proposal, and if this be the case, the territory shall be part of said community college district with all the force and effect as though said territory had been originally included in said community college district at the time of its original organization.

Notices to and by boards of county commissioners and to the state board of education shall be as provided in [section 33-2104, Idaho Code](#). The state board of education shall notify the state liquor division that such territory has become a part of the community college district.

**History.**

1963, ch. 363, § 5, p. 1037; am. 2009, ch. 23, § 57, p. 53.

## **STATUTORY NOTES**

### **Cross References.**

Liquor account, distribution to community college district, § 23-404.

State liquor division, § 23-201 et seq.

### **Amendments.**

The 2009 amendment, by ch. 23, throughout the section, substituted “community college district” for “junior college district” or similar language; and in the last paragraph, substituted “state liquor division” for “state liquor dispensary.”

**33-2106. Trustees of community college districts.** — (1) The board of trustees of each community college district shall consist of five (5) electors who shall reside in a different trustee zone from each other and who shall be appointed or elected as provided in this section.

(a) Immediately following the establishment of a new community college district, the state board of education shall divide the district into five (5) trustee zones, which shall be as nearly equal in population as practicable. If a community college district is situated within two (2) or more counties, and any one (1) of the counties has sufficient population to warrant at least one (1) zone, then the boundaries of a trustee zone shall be located wholly within the boundaries of such county. The state board shall also appoint the members of the first board who shall serve until the election and qualification of their successors.

(b) At the first election of trustees after the creation of a district, five (5) trustees shall be elected: two (2) for terms of two (2) years each, and three (3) for terms of four (4) years each. Thereafter, the successors of persons so elected shall be elected for terms of four (4) years.

(c) Excluding any first election of trustees after the creation of a district, at any other election of trustees held in 2008, and in each trustee election thereafter, trustees shall be elected to terms of four (4) years. If more than two (2) trustee positions are eligible for election in 2008, one (1) trustee shall be elected to a term of four (4) years and two (2) trustees shall be elected to a term of six (6) years. Thereafter, the successors of persons so elected in 2008 shall be elected for terms of four (4) years.

(d) The expiration of any term shall be at the regular meeting of the trustees next following the election for the successor terms.

(2) Elections of trustees of community college districts shall be biennially, in even-numbered years, and shall be held on a date authorized in [section 34-106, Idaho Code](#). Vacancies on the board of trustees shall be filled by appointment by the remaining members, but if by reason of vacancies there remain on the board less than a majority of the required number of members, appointment to fill such vacancies shall be made by

the state board of education. Any person so appointed must reside in the trustee zone where the vacancy occurs and shall serve until the next trustee election, at which time his successor shall be elected for the unexpired term. The trustees shall take and subscribe the oath of office required in the case of state officers and said oath shall be filed with the secretary of state.

(3) Notice of the election, the conduct thereof, the qualification of electors and the canvass of returns shall be as prescribed in chapter 14, title 34, Idaho Code.

(4) All eligible electors within a community college district may vote for candidates in each and every zone. An individual who is a candidate for a specific zone of the community college district must reside in that same specific zone, and the candidate in each zone receiving the largest number of votes from the district shall be declared elected. An individual shall be a candidate for a specific position of the board and each candidate must declare which position he seeks on the board of trustees. If it be necessary to resolve a tie between two (2) or more persons, the board of trustees shall determine by lot which thereof shall be declared elected. The clerk of the board shall promptly notify any person by mail of his election, enclosing a form of oath to be subscribed by him as herein provided.

(5) When elections held pursuant to this section coincide with other elections held by the state of Idaho or any subdivision thereof, or any municipality or school district, the board of trustees may make agreement with the body holding such election for joint boards of election and the payment of fees and expenses of such boards of election on such proportionate basis as may be agreed upon.

(6) At its first meeting following the appointment of the first board of trustees, and at the first regular meeting following any community college trustee election, the board shall organize, and shall elect one (1) of its members chairman, one (1) a vice-chairman; and shall elect a secretary and a treasurer, who may be members of the board; or one (1) person to serve as secretary and treasurer, who may be a member of the board.

(7) The board shall set a given day of a given week in each month as its regular meeting time. Three (3) members of the board shall constitute a quorum for the transaction of official business.

(8) The authority of trustees of community college districts shall be limited in the manner prescribed in [section 33-507, Idaho Code](#).

(9) Any decision of the state board of education issued pursuant to chapter 21, title 33, Idaho Code, may be appealed to the district court of any county in which the district or proposed district lies or shall lie. The pleadings and other papers shall be filed not more than sixty (60) days after notice of the order appealed and service of two (2) copies thereof shall be made upon the state board of education.

### **History.**

1963, ch. 363, § 6, p. 1037; am. 1973, ch. 10, § 1, p. 22; am. 2007, ch. 92, § 1, p. 271; am. 2008, ch. 27, § 9, p. 50; am. 2011, ch. 145, § 1, p. 409; am. 2016, ch. 193, § 2, p. 538; am. 2019, ch. 288, § 21, p. 830.

## **STATUTORY NOTES**

### **Cross References.**

Oath of office, § 59-401 et seq.

Secretary of state, § 67-901 et seq.

### **Amendments.**

The 2007 amendment, by ch. 92, throughout the section, substituted “community college” for “junior college,” and added subsection designations; in subsection (1)(b), substituted “and three (3) for terms of four (4) years each” for “two (2) for terms of fours years each, and one (1) for a term of six (6) years” in the first sentence and “four (4) years” for “six (6) years” at the end; added subsection (1)(c); in the first sentence in subsection (2), substituted “held on a date authorized in [section 34-106, Idaho Code](#)” for “held on such uniform day of such uniform month as the board of trustees shall determine”; and in subsection (3), substituted “as prescribed in chapter 14, title 34, Idaho Code” for “as prescribed for the election of school district trustees, and the board of trustees shall have and perform the duties therein prescribed for the board of trustees of school districts,” and deleted the former last sentence, which read: “As a condition of voting, an elector shall execute an oath before a judge or clerk of election

to the effect that such elector is a school district elector and a resident of the junior college district.”

The 2008 amendment, by ch. 27, substituted “one (1) of its members” for “one (1) of its member” in subsection (6).

The 2011 amendment, by ch. 145, added subsection (7) and redesignated the subsequent subsections accordingly.

The 2016 amendment, by ch. 193, in subsection (1), rewrote the introductory paragraph and paragraph (a), which formerly read: “The board of trustees of each community college district shall consist of five (5) school electors residing in the district who shall be appointed or elected as herein provided. (a) Immediately following the establishment of a community college district, the state board of education shall appoint the members of the first board, who shall serve until the election and qualification of their successors.”; inserted “must reside in the trustee zone where the vacancy occurs and” in the third sentence in subsection (2); and rewrote the first sentence in subsection (4), which formerly read: “The person or persons, equal in number to the number of trustees to be elected for regular or unexpired terms, receiving the largest number of votes shall be declared elected”; and added subsection (10).

The 2019 amendment, by ch. 288, deleted former subsection (7), which read: “The provisions of [sections 67-6601 through 67-6616, Idaho Code](#), and [sections 67-6623 through 67-6630, Idaho Code](#), are hereby made applicable to all community college trustee elections. Provided however, that the county clerk shall stand in place of the secretary of state and the county prosecutor shall stand in place of the attorney general. Any report or filing required to be filed by or for a candidate by such sections of Idaho Code shall be filed with the county clerk of the county where such candidate resides”, and redesignated the subsequent subsections accordingly.

### **Compiler’s Notes.**

This section was amended by S.L. 2009, ch. 341, § 50, effective January 1, 2011. However, S.L. 2009, ch. 341, § 50 was repealed by S.L. 2010, ch. 185, § 3, effective January 1, 2011. Thus, the 2009 amendment was not given effect.



**Effective Dates.**

Section 4 of S.L. 2007, ch. 92 declared an emergency. Approved March 20, 2007.

Section 3 of S.L. 2016, ch. 193 declared an emergency. Approved March 24, 2016.

Section 26 of S.L. 2019, ch. 288 provided that the act should take effect on and after January 1, 2020.

**33-2107. General powers of the board of trustees.** — The board of trustees of each community college district shall have the power:

(1) To adopt policies and regulations for its own government and the government of the college;

(2) To employ legal counsel and other professional and nonprofessional persons, and to prescribe their qualifications;

(3) To acquire and hold, and to dispose of, real and personal property, and to construct, repair, remodel and remove buildings in the manner prescribed for trustees of school districts pursuant to sections 33-301 and 33-601, Idaho Code;

(4) To contract for the acquisition, purchase or repair of buildings in the manner prescribed for trustees of school districts pursuant to [section 33-601, Idaho Code](#);

(5) To issue general obligation or revenue bonds in the manner now, or as may be, prescribed by law;

(6) To convey and transfer real property of the district upon which no college buildings used for instruction are situated, to nonprofit corporations, school districts, junior college housing commissions, counties or municipalities, with or without consideration; to rent real or personal property for the use of the college, its students or faculty, for such terms as may be determined by the board of trustees; to lease real property of the district not actually in use for college instructional purposes for such terms as may be determined by the board; and to lease real property and improvements to the Idaho state building authority, for a term not to exceed fifty (50) years, with or without consideration, and to enter into agreements with the Idaho state building authority for the Idaho state building authority to provide a facility, pursuant to [section 67-6410, Idaho Code](#);

(7) To acquire, hold and dispose of water rights;

(8) To accept grants or gifts of money, materials or property of any kind from any governmental agency, or from any person, firm or association, on such terms as may be determined by the granter;

(9) To cooperate with any governmental agency, or any person, firm or association in the conduct of any educational program; to accept grants from any source for the conduct of such program; and to conduct such program on, or off, campus;

(10) To invest any funds of the district in such securities, and apply the interest or profits from such investment, as prescribed for the investment of the funds, and the application of the interest or profits, in the case of school district boards of trustees.

### **History.**

1963, ch. 363, § 7, p. 1037; am. 2003, ch. 349, § 6, p. 932; am. 2016, ch. 108, § 1, p. 312.

## **STATUTORY NOTES**

### **Cross References.**

Commissions for dormitory housing, creating, § 33-2118.

Idaho state building authority, § 67-6401 et seq.

### **Amendments.**

The 2016 amendment, by ch. 108, made stylistic changes to the subsection designations; substituted “community college” for “junior college” in the introductory paragraph; substituted “policies and regulations” for “rules and regulations” in subsection (1); added “in the manner prescribed for trustees of school districts pursuant to sections 33-301 and 33-601, Idaho Code” in subsection (3); added “pursuant to [section 33-601, Idaho Code](#)” in subsection (4); and deleted former subsection (5), which read: “To dispose of real and personal property in the manner prescribed for trustees of school districts”, and redesignated the subsequent subsections.

**33-2107A. Establishment and operation of third and fourth year college curriculum in community college districts.** — The board of trustees of a community college district of an urban area, upon filing with the state board of education a notice of intent to exercise the powers herein granted, shall thereafter be authorized and empowered to organize and operate an upper division consisting of the third and fourth years of college curriculum with powers to grant baccalaureate degrees in liberal arts and sciences, business and education. Upper division courses and programs are subject to approval pursuant to section 33-107(8), Idaho Code. The operation of the community college and the upper division shall be kept separate; however, the joint use of facilities is authorized provided a proper cost allocation is made. The buildings and equipment for the use of said upper division may be purchased, leased, constructed, maintained, and administered from funds obtained by the board of trustees' levy. Such levy shall not exceed two hundredths percent (.02%) of the market value for assessment purposes on all taxable property within the taxing district. Said board under section 33-2113, Idaho Code, may obtain capital funds through issuance of general obligation bonds for such equipment and buildings, with the total tax levy for operation and bonds of the upper division not to exceed the levy limit authorized in this section. Such tax shall be certified and levied as provided for other taxes of the district. All other costs of operation of said upper division shall be provided by tuition and fees paid by the student. Gifts and grants may be accepted by the board of trustees for this or other purposes. A student who has been a resident of the community college district pursuant to section 33-2110B, Idaho Code, for not less than one (1) year at time of admission to the upper division, or who has completed the first two (2) years in the college, shall be given preference for admission to the upper division.

### **History.**

I.C., § 33-2107A, as added by 1965, ch. 16, § 4, p. 27; am. 1995, ch. 82, § 12, p. 218; am. 2017, ch. 70, § 1, p. 169.

## **STATUTORY NOTES**

**Amendments.**

The 2017 amendment, by ch. 70, substituted “community college” for “junior college” in the section heading and throughout the section; inserted the present second sentence; inserted “taxing” near the end of the present fifth sentence; and substituted “community college district pursuant to [section 33-2110B, Idaho Code](#)” for “district” in the last sentence.

**Compiler’s Notes.**

Section 1 of S.L. 1965, ch. 16 contained a statement of policy which read: “It is hereby declared to be the policy of the state of Idaho in the public interest to provide an opportunity for a full college education to students living at home by permitting the establishment of an upper division college curriculum accessible to such students living in or near urban counties as herein defined.”

**Effective Dates.**

Section 5 of S.L. 1965, ch. 16 declared an emergency. Approved February 5, 1965.

**33-2107B. Powers granted by preceding section in addition to other powers.** — The provisions of this act shall be in addition to all powers and authorities heretofore vested by law or by regulation of the state board of education in the board of trustees of a community college district and all provisions of sections 33-2101, 33-2103 through 33-2115, Idaho Code, and any additions or supplements amendatory thereto, shall be applicable to providing the third and fourth year college curriculum within such community college districts, unless the same are specifically in contradiction with any provision of this act.

**History.**

1965, ch. 16, § 2, p. 27; am. 2017, ch. 70, § 2, p. 169.

**STATUTORY NOTES**

**Amendments.**

The 2017 amendment, by ch. 70, substituted “community college” for “junior college” throughout and deleted the former last sentence, which read: “Districts exercising the powers herein granted may drop the word ‘Junior’ from their designation”.

**Compiler’s Notes.**

The term “this act” near the beginning and at the end of the section refers to S.L. 1965, Chapter 16, compiled as §§ 33-2107A to 33-2107C.

**33-2107C. Definition of urban area districts empowered to create upper divisions.** — The powers provided herein for instruction of the third and fourth year college curriculum shall be exercisable only by community college districts which at the date of the filing of notice of establishment of upper divisions as required are urban area districts, which is defined as a taxing district containing: (a) market value for assessment purposes of taxable property of not less than three hundred fifty million dollars (\$350,000,000); and (b) a population of not less than ninety thousand (90,000) persons, in the taxing district where the college is located.

**History.**

1965, ch. 16, § 3, p. 27; am. 1980, ch. 350, § 14, p. 887; am. 2017, ch. 70, § 3, p. 169.

**STATUTORY NOTES**

**Amendments.**

The 2017 amendment, by ch. 70, substituted “community college” for “junior college” near the middle of the section and inserted “taxing” preceding “district” in two places.

**33-2108. Junior college districts public corporations — Sue and be sued — Corporate seal.** — Each junior college district shall be a public corporation, may sue and be sued in its corporate name, and shall have an official seal which shall be judicially noticed.

**History.**

1963, ch. 363, § 8, p. 1037.

**JUDICIAL DECISIONS**

**Cited in:** Wickstrom v. North Idaho College, 111 Idaho 450, 725 P.2d 155 (1986).



**33-2109. President — Instructors and other employees — Requirements for admission and graduation — Certificates and diplomas — Textbooks and equipment.** — The board of trustees shall elect a president of the college and, upon his recommendation, appoint such officers, instructors, specialists, clerks and other personnel as it may deem necessary; fix their salaries, and prescribe their duties. It shall fix the requirements for admission, and the time and standard of graduation, and issue such certificates for graduation and diplomas as may be deemed suitable. It shall prescribe the textbooks, and provide suitable apparatus, furniture and equipment for carrying on the work of the college.

**History.**

1963, ch. 363, § 9, p. 1037.

**33-2109A. Use of unused sick leave.** — Upon separation from employment with the community college district by retirement, in accordance with chapter 13, title 59, Idaho Code, or with chapter 1, title 33, Idaho Code, an employee shall be accorded credit for unused sick leave as provided in section 67-5333, Idaho Code. Each community college district shall contribute to the sick leave account for the purposes of this section, as provided in subsection (2)(c) of section 67-5333, Idaho Code.

**History.**

I.C., § 33-2109A, as added by 1983, ch. 100, § 1, p. 218; am. 1997, ch. 275, § 4, p. 813; am. 2006, ch. 380, § 2, p. 1175.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 380, substituted “community college” for “junior college” twice; substituted “67-5333” for “67-5339”; and substituted “subsection (2)(c) of section 67-5333” for “subsection (3) of section 67-5339.”

**33-2109B. Sick leave transferred — Boise State University — College of Western Idaho. [Null and void.]**

Null and void, pursuant to Section 3 of S.L. 2009, ch. 22, effective September 2, 2009.

**History.**

I.C., § 33-2109B, as added by 2009, ch. 22, § 1, p. 52.

**33-2110. Tuition.** — (1) All students of a community college shall pay tuition that shall be fixed annually by the board of trustees not later than the 1st day of August of each year. The tuition for full-time students taking normal academic courses provided by the college, who are residents of the district, shall be fixed at not less than three hundred fifty dollars (\$350) per annum, and may be increased by increments of not more than ten percent (10%) per annum to a maximum tuition of two thousand five hundred dollars (\$2,500) per annum. The tuition shall be, as nearly as is practicable, the annual costs of all elements of providing the courses of instruction, including interest on general obligation bonds, teaching, administration, maintenance, operation and depreciation of equipment and buildings, supplies and fuel, and other ordinary and necessary expenses of operation incurred in providing courses by the community college, provided that the tuition of students residing outside the district but within the county or counties wherein the district is located shall be fixed after taking into account moneys received by the community college district from any funds allocated to the community college from the educational funds of the state of Idaho, other than allocations for career technical education; and provided that the tuition of students residing outside the district and the county but within the state of Idaho shall be fixed after taking into account moneys received from educational funds other than career technical moneys, as referred to in this chapter, from the state of Idaho. Receipt of moneys, as hereinbefore provided in this section, shall be based upon the receipts from the sources referred to during the fiscal year preceding the fixing of the tuition. A student in a community college shall not be deemed a resident of the district or of the county or of the state of Idaho, unless that student is deemed a resident as defined by section 33-2110B, Idaho Code, for the district, county or state prior to the date of his first enrollment in the community college, and no student who was not a resident of the district, county or state shall gain residence while attending and enrolled in the community college. The residence of a minor shall be deemed to be the residence of his parents or parent or guardian. Tuition shall be payable in advance, but the board may, in its discretion, permit tuition to be paid in installments.

(2) The board of trustees shall also fix fees for laboratory and other special services provided by the community college and for special courses, including, but not limited to, night school, off-campus courses, summer school, career technical courses, as otherwise provided in this chapter, and other special instruction provided by the community college and nothing in this chapter shall be deemed to control the amount of tuition for special courses or fees for special services, as herein provided, but the same shall be, as nearly as reasonable, sufficient to cover the cost of all elements of providing courses as above defined.

(3) In this chapter, unless the context requires otherwise, the following definitions shall be uniformly applied. The application of these definitions shall be retroactive and prospective.

(a) “Fees” shall include all charges imposed by the governing body, to students, as a whole or individually, in excess of tuition. Student fees may be imposed for special courses, instruction, and service:

(i) “Special course or instruction fee” means those fees charged for any class or educational endeavor that has unique costs beyond a traditional college lecture class; for example, foreign language audio or visual instruction, specialized musical instruction, computer class, art class involving supplies or audiovisual equipment, career technical instruction, laboratory class, remedial instruction, team teaching, satellite transmissions, outside instructor, professionally assisted instruction, *etc.*

(ii) “Special service fee” means those fees charged for activity, benefit, or assistance offered to students which is beyond traditional classroom instruction; for example, student government support, providing of student health staff or facilities, student union support, intramural and intercollegiate athletics, recreational opportunities, financial aid services, graduation expense, automobile parking, student yearbook/publication, insurance, registration, noncapital library user fee, *etc.*

Fees shall not be imposed for any capital improvements except as specifically authorized in chapter 21, title 33, Idaho Code.

(b) “Tuition” means a sum charged students for cost of college instruction and shall include costs associated with maintenance and operation of physical plant, student services and institutional support.

### **History.**

1963, ch. 363, § 10, p. 1037; am. 1965, ch. 238, § 3, p. 576; am. 1967, ch. 327, § 1, p. 957; am. 1971, ch. 127, § 1, p. 505; am. 1977, ch. 59, § 1, p. 113; am. 1981, ch. 106, § 1, p. 160; am. 1982, ch. 255, § 6, p. 653; am. 1982, ch. 264, § 1, p. 675; am. 1983, ch. 92, § 1, p. 204; am. 1990, ch. 54, § 1, p. 125; am. 1994, ch. 179, § 1, p. 418; am. 1999, ch. 329, § 31, p. 852; am. 2002, ch. 294, § 1, p. 846; am. 2008, ch. 133, § 1, p. 375; am. 2016, ch. 25, § 10, p. 35.

## **STATUTORY NOTES**

### **Amendments.**

The 2008 amendment, by ch. 133, in subsection (1), in the second sentence, substituted “two thousand five hundred dollars (\$2,500)” for “one thousand two hundred fifty dollars (\$1,250),” and in the third sentence, deleted “For all other students taking such courses” from the beginning.

The 2016 amendment, by ch. 25, substituted “career technical” for “professional-technical” throughout the section.

### **Effective Dates.**

Section 2 of S.L. 2002, ch. 294 declared an emergency. Approved March 26, 2002.

## **RESEARCH REFERENCES**

**A.L.R.** — Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college. [53 A.L.R.3d 641](#).

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college. [56 A.L.R.3d 641](#).

**33-2110A. Tuition of out-of-district Idaho students, county taxes and other financial support.** — (1) Any student residing in the area of a county outside of a community college district or in a county without a community college district, who has been a resident of the county and state as defined by section 33-2110B, Idaho Code, immediately prior to the date of his first enrollment in a community college, which residence may not be acquired while attending and enrolled in a community college, may enroll in any community college in the state, and the county of his residence shall pay that portion of his tuition as hereinafter set out. The tuition which shall be paid by the resident county shall be that portion of the tuition uniformly established by a community college district for all out-of-district students, both in state as well as out of state, pursuant to section 33-2110, Idaho Code, after deducting therefrom the amount of tuition paid by a resident student at the community college; however, the liability of the resident county shall not exceed two-thirds ( $\frac{2}{3}$ ) of the total tuition and fees charged and in no instance shall it exceed five hundred dollars (\$500) each semester for a two (2) semester year for a full-time student. The student shall pay the tuition and fees charged a student resident in the district, and the balance, if any, of the out-of-district student tuition above the maximum liability of the county of his residence. No county shall be liable for out-of-district tuition unless the board of county commissioners of that county has first verified to the community college in writing the fact that the student is a resident of the county. Upon verification, the county shall thereafter be liable for the out-of-district tuition so long as the student is duly enrolled and attending the college subject to the following limitations:

- (a) Liability shall be the term of the curriculum for which the student is enrolled, with a maximum lifetime liability of three thousand dollars (\$3,000). The three thousand dollar (\$3,000) maximum is exclusive of any reimbursement to counties for county tuition from the state or other funds.
- (b) Liability shall terminate if the student's domiciliary residence changes and that change continues for twelve (12) months.

(2) The tuition shall be established annually not later than August 1 and shall be forthwith filed with the state board of education, together with a statement supporting the computation thereof.

(3) To receive county payment of tuition, each out-of-district student taking community college courses shall complete a certificate of residency form and submit it to the county clerk of their resident county on or before December 1 of each year for classes taken during that fall semester, and on or before May 1 of each year for classes taken during that spring semester. Failure by a student to submit the certificate of residency form by these deadlines is sufficient grounds for denial of the certificate of residency by the county.

(4) Each county shall provide information regarding which students' certificates of residency were approved to each community college on or before December 20 of each year for classes taken during that fall semester, and on or before May 20 of each year for classes taken during that spring semester.

(5) Each community college shall submit an invoice to each county of residence of each out-of-district student on or before January 20 of each year for classes taken during that fall semester, and on or before June 20 of each year for classes taken during that spring semester. Counties are not required to pay for classes that are billed past these deadlines. Invoices shall list the out-of-district tuition amount for each out-of-district student who was approved by the county of residency, and shall list only students still duly enrolled in the class past the community college's drop deadline.

(6) Each board of county commissioners shall allow and order paid any timely submitted and proper invoice for tuition at a regular meeting following receipt of the invoice. Upon failure of a county to pay a timely submitted and proper invoice, a community college district may commence action in the district court of the state of Idaho for the county to collect the same.

(7) For the payment of tuition of out-of-district students as herein provided, there shall be allocated in each county without a community college district to a county community college fund, and paid to the county treasurer to be held in that fund, fifty percent (50%) of all moneys apportioned to the county out of liquor funds of the state of Idaho as set



forth in chapter 4, title 23, Idaho Code, and that amount shall be deducted from the amount that would otherwise be allocated to the county; and if liquor funds are not sufficient to pay the tuition, commencing for the calendar year 1966, the board of county commissioners shall levy upon the taxable property within each county without a community college district, and, in a county with such a district, upon the taxable property within the county lying outside of the community college district, a property tax not to exceed six hundredths percent (.06%) of market value for assessment purposes, to be certified as set out in [section 33-2111, Idaho Code](#). The proceeds of the levy shall be placed in the county community college fund.

(8) Based upon the enrollment established by the first semester's tuition invoices received by January 20, the board of county commissioners shall establish immediately a total community college annual tuition budget for two (2) semesters which shall be equal to twice the amount of the tuition bills plus a contingency factor of ten percent (10%). This budget shall be adjusted after June 20 based on any change of enrollment shown by the second semester tuition bills. If enrollment is from zero to not more than four (4) students, a minimum budget of five (5) students at five hundred dollars (\$500) each shall be established. In the event all tuition bills received have been paid, notwithstanding any other provision hereof, (a) any liquor funds received, which in the quarter when received to any extent are in excess of the budget, to the extent of that excess shall not be paid over to the county treasurer to be held in the community college fund, and (b) any funds received from the levy on taxable property, which when received to any extent are in excess of the budget after the application of liquor funds thereto, to the extent of that excess shall not be paid over to the community college fund. Excess liquor funds shall be paid pursuant to law as if this section were not applicable and excess funds shall be paid to the general fund of the county. In the event the total liquor fund payable hereunder to the county community college fund together with the receipts from the levy on taxable property for each fiscal year are insufficient to pay tuition bills, which deficiency is caused by a levy of less than the maximum allowed hereunder, or by enrollment in excess of the budget herein provided, the budget for each following year shall be increased to the maximum allowed by the maximum tax levy authorized to pay any deficiency at the earliest time. If the deficiency is due to the lack of funds in a fiscal year when the maximum levy authorized shall have been made, for

the next fiscal year thereafter the number of students from that county shall be limited by the board of county commissioners to the extent necessary to pay the deficiency not later than the end of the following year. A community college shall nevertheless have a right to require any student residing outside the district to pay out-of-district tuition if the county of his residence is more than twenty-five percent (25%) in arrears of a total county tuition bill for one (1) year as of the beginning of the subsequent semester, but tuition shall be refunded to such students when paid by the county.

### **History.**

**I.C., § 33-2110A**, as added by 1965, ch. 238, § 4, p. 576; am. 1967, ch. 327, § 2, p. 957; am. 1967, ch. 371, § 1, p. 1066; am. 1969, ch. 179, § 1, p. 536; am. 1971, ch. 127, § 2, p. 505; am. 1974, ch. 139, § 8, p. 1343; am. 1975, ch. 160, § 5, p. 414; am. 1982, ch. 255, § 7, p. 653; am. 1982, ch. 264, § 2, p. 675; am. 1983, ch. 113, § 1, p. 241; am. 1985, ch. 218, § 1, p. 528; am. 1990, ch. 113, § 1, p. 235; am. 1996, ch. 208, § 9, p. 658; am. 1996, ch. 322, § 31, p. 1029; am. 2005, ch. 42, § 1, p. 166; am. 2016, ch. 303, § 1, p. 853.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 208, § 9, in subsection (3), deleted “and the moneys derived from such levy shall be exempt from the limitation imposed by **section 63-2220, Idaho Code**” from the end of the former second sentence, which was deleted in its entirety by ch. 322, § 31, see below.

The 1996 amendment, by ch. 322, § 31, in subsection (3), deleted the former second sentence which read, “Such levy shall be exempt from the limitation imposed by **section 63-923(1), Idaho Code**, and the moneys derived from such levy shall be exempt from the limitation imposed by **section 63-2220, Idaho Code**.”

The 2016 amendment, by ch. 303, in subsection (1), substituted “out-of-district” for “nonresident” in the third sentence of the introductory

paragraph and added the second sentence in paragraph (a); rewrote subsection (2), which formerly read: “The nonresident tuition shall be established annually not later than August 1 and shall be forthwith filed with the state board of education, together with a statement supporting the computation thereof. Each community college, by October 15 and March 15 of each year, shall bill the county of residence of each nonresident student enrolled at the commencement of each semester, and each board of county commissioners shall allow and order paid any bill for tuition at the first regular meeting following receipt of the bill, but not exceeding forty-five (45) days after receipt. Upon failure of a county to pay the tuition, a community college district may commence action in the district court of the state of Idaho for the county to collect the same”; added subsections (3) through (6) and redesignated the subsequent subsections accordingly; in present subsection (7), substituted “out-of-district” for “nonresident” in the first sentence and deleted the former last sentence, which read: “Apportionment of liquor funds herein provided shall commence for the fiscal quarter ending September 30, 1965, and accruing during that quarter”; in present subsection (8), substituted “invoices received by January 20” for “bills received by October 15” in the first sentence, substituted “June 20” for “March 15” in the second sentence, deleted the former next-to-last sentence, which read: “Provided nevertheless, for the two (2) semesters commencing September, 1965, the board of county commissioners shall limit the community college budget and total students to estimated liquor funds available on quarterly disbursements through June 30, 1966. Any limitation of students authorized shall be accomplished (a) on the basis of student grades and financial need, and (b) by each community college notifying the county of residence of each student’s application and the county shall accept or reject the application at least five (5) days prior to the tuition billing dates set out herein”, and substituted “out-of-district” for “nonresident” in the last sentence.

### **Compiler’s Notes.**

Section 5 of S.L. 1965, ch. 238 read: “Savings clause and separability. — This act shall not impair or affect the right of any person to hold any office or position under the school laws of this state, nor shall it impair or affect any act done, or right accruing, accrued or acquired, or any liability, penalty or forfeiture incurred under said laws, at the time this act takes effect. It is

hereby declared to be the controlling legislative intent that if any provisions of this act, or any of the applications thereof, to any person or circumstances, is held invalid, the remainder of the act and the application of such provisions to persons and circumstances other than those to which it is held invalid, shall not be affected thereby, to the end that the provisions of this act are separable.”

**Effective Dates.**

Section 2 of 1969, ch. 179 declared an emergency. Approved March 18, 1969.

Section 6 of 1969, ch. 238 provided that the act should take effect from and after July 1, 1965.

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

**33-2110B. Residency — Rules — Appeal — Standards for in-district, out-of-district and out-of-state students.** — (1) For purposes of this chapter, an “in-district student” is:

(a) Any student whose parents or court-appointed guardians are domiciled in the community college district and provide more than fifty percent (50%) of his support. Domicile, as used in this section, means an individual’s true, fixed and permanent home and place of habitation. It is the place where he intends to remain and to which he expects to return when he leaves without intending to establish a new domicile elsewhere. To qualify under this section, the parents or guardian must have resided continuously in the community college district for twelve (12) months next preceding the opening day of the term for which the student matriculates.

(b) Any student who receives less than fifty percent (50%) of his support from parents or legal guardians who are not residents of the community college district for voting purposes and who has continuously resided in the community college district for twelve (12) months next preceding the opening day of the period of instruction during which he proposes to attend the community college.

(c) The spouse of a person who is classified, or is eligible for classification, as a resident of the community college district for the purposes of attending that community college.

(d) A member of the armed forces of the United States, stationed in the community college district on military orders or who entered service as a resident of the community college district and who has maintained resident status, but is not stationed within the community college district on military orders.

(e) An officer or an enlisted member of the Idaho national guard.

(f) A student whose parents or guardians are members of the armed forces and stationed in the community college district on military orders and who receives fifty percent (50%) or more of support from parents or legal guardians. The student, while in continuous attendance, shall not

lose his residence when his parents or guardians are transferred on military orders.

(g) A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of active service, who at the time of separation designates the community college district as his intended domicile or who has the district as the home of record in service and enters the community college within one (1) year of the date of separation.

(h) Any individual who has been domiciled in the community college district, has qualified and would otherwise be qualified under the provisions of this statute and who is away from the district for a period of less than one (1) calendar year and has not established legal residence elsewhere, provided a twelve (12) month period of continuous residence has been established immediately prior to departure.

(2) A community college board of trustees shall adopt rules and regulations applicable to their college now or hereafter established to determine in-district, out-of-district and out-of-state residence status of any student and to establish procedures for review of that status.

(3) Appeal from a final determination denying resident status may be initiated by the filing of an action in the district court of the county in which the affected community college is located. An appeal from the district court shall lie as in all civil actions.

(4) Nothing contained herein shall prevent a community college board of trustees from waiving tuition to be paid by out-of-district, out-of-state or foreign students.

(5) Nothing contained herein shall prevent a community college board of trustees from establishing quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not residents for purposes of the first two (2) years of postsecondary education.

### **History.**

**I.C., § 33-2110B**, as added by 1982, ch. 264, § 3, p. 675; am. 1983, ch. 113, § 2, p. 241; am. 2008, ch. 66, § 1, p. 169; am. 2014, ch. 75, § 1, p. 197; am. 2016, ch. 303, § 2, p. 853.

## STATUTORY NOTES

### **Amendments.**

The 2008 amendment, by ch. 66, throughout the section, substituted “community college” for “junior college”; and added present paragraph (1) (e) and made related redesignations.

The 2014 amendment, by ch. 75, in subsection (1), inserted “as used in this section” in the second sentence of subsection (a); added “or who entered service as a resident of the community college district and who has maintained resident status, but is not stationed within the community college district on military orders” at the end of subsection (d).

The 2016 amendment, by ch. 303, substituted “in-district, out-of-district and out-of-state students” for “nonresidents” in the section heading; substituted “an ‘in-district student’” for “a ‘resident student’” in the introductory paragraph; inserted “in-district, out-of-district and out-of-state” in subsection (2); and substituted “out-of-district, out-of-state or foreign” for “resident” in subsection (4).

**33-2111. Taxes and other financial support for community colleges.**

— For the maintenance and operation of each community college, in addition to the income from tuition paid by students as hereinbefore provided, the board of trustees may levy upon the taxable property within the district a tax not to exceed one hundred twenty-five thousandths percent (.125%) of the market value for assessment purposes on all taxable property within the district.

The tax levy determined by the board of trustees, within said limit, shall be certified to the board of county commissioners in each county in which the district may lie, not later than the second Monday in September of each year. No levy in excess of one hundred twenty-five thousandths percent (.125%) of the market value for assessment purposes on all taxable property within the district shall be made unless a supplemental levy in a specified amount be first authorized through an election held, as provided in title 34, Idaho Code, as if the community college district were a school district and approved by a majority of the district electors voting in such election.

**History.**

1963, ch. 363, § 11, p. 1037; am. 1979, ch. 291, § 1, p. 769; am. 1980, ch. 242, § 1, p. 561; am. 1982, ch. 255, § 8, p. 653; am. 1995, ch. 82, § 13, p. 218; am. 1996, ch. 322, § 32, p. 1029; am. 2007, ch. 129, § 1, p. 386; am. 2009, ch. 341, § 51, p. 993.

**STATUTORY NOTES**

**Cross References.**

Liquor account, distribution to state community college account, § 23-404.

Payment and collection of property taxes, § 63-1101 et seq.

**Amendments.**

The 2007 amendment, by ch. 129, twice substituted “one hundred twenty-five thousandths percent (.125%)” for “sixteen hundredths percent (.16%).”



The 2009 amendment, by ch. 341, substituted “title 34, Idaho Code” for “sections 33-401 through 33-406, Idaho Code” in the last paragraph.

**Effective Dates.**

Section 2 of S.L. 2007, ch. 129 declared an emergency retroactively to January 1, 2007 and approved March 21, 2007.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**33-2112. Additional tax levy for gymnasium and grounds.** — The board of trustees of any community college district may levy a tax not exceeding one one-hundredth percent (.01%) on each dollar of the assessed value of the taxable property within the district for the maintenance and care of the gymnasium and college grounds of the district, in addition to other taxes authorized by law for the maintenance and support of the community college.

**History.**

1963, ch. 363, § 12, p. 1037; am. 1991, ch. 315, § 1, p. 822; am. 1996, ch. 208, § 10, p. 658; am. 1996, ch. 322, § 33, p. 1029.

**STATUTORY NOTES**

**Amendments.**

This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 208, § 10, deleted “and the moneys derived from such levy shall be exempt from the limitations imposed by [section 63-2220, Idaho Code](#)” from the end of the former last sentence, which was deleted in its entirety by ch. 322, § 33, see below.

The 1996 amendment, by ch. 322, § 33, deleted the former last sentence which read, “Such levy shall be exempt from the limitation imposed in [section 63-923\(1\), Idaho Code](#), and the moneys derived from such levy shall be exempt from the limitation imposed by [section 63-2220, Idaho Code](#).”

**Effective Dates.**

Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

**33-2113. Capital funds.** — (1) The board of trustees of each junior college district may issue general obligation bonds in the manner and form, and for the same purposes, as prescribed for public school districts, the maximum amount of general obligation bonds outstanding, computed in the manner so prescribed shall not at any time exceed one per cent (1%) of the market value for assessment purposes of the taxable property in the district. The board may also create a plant facilities reserve fund in the manner, and for the same purposes, as prescribed for school districts.

(2) Tax levies for the purposes of this section shall be certified to the board of county commissioners at the same time as are certified the tax levies provided in [section 33-2111, Idaho Code](#).

(3) The board of trustees of each junior or community college district may issue bonds in the same manner and form, and for the same purposes as state institutions of higher education pursuant to chapter 38, title 33, Idaho Code.

**History.**

1963, ch. 363, § 13, p. 1037; am. 1980, ch. 350, § 15, p. 887; am. 1987, ch. 264, § 1, p. 556.

**STATUTORY NOTES**

**Cross References.**

Distribution of liquor fund, § 23-404.

**33-2114. Reports of junior college districts.** — The board of trustees of each junior college district shall cause to be made, annually, a full and complete audit of the financial transactions of the district. Such audit shall be made by and under the direction of the board of trustees by an independent auditor in accordance with generally accepted auditing standards and procedures. The auditor shall be employed on written contract.

One (1) copy of the audit report shall be filed with the legislative services office, and one (1) copy with the state board of education, not more than ten (10) days after its acceptance by the board of trustees.

The state board of education may at its discretion direct the board of trustees of any junior college district to cause to be made an examination of the books and accounts of their district, as provided for public school districts.

The board of trustees shall submit to the state board of education such other reports as the state board may from time to time require.

**History.**

1963, ch. 363, § 14, p. 1037; am. 1977, ch. 71, § 4, p. 134; am. 1993, ch. 327, § 16, p. 1186; am. 1996, ch. 159, § 14, p. 502.

**STATUTORY NOTES**

**Cross References.**

Legislative services office, § 67-701 et seq.

**Effective Dates.**

Section 16 of S.L. 1963, ch. 363, provided that the act should be in full force and effect on and after July 1, 1963.

**33-2115. Counties, cities, school districts and boards to cooperate. —**

(1) The county commissioners of the county in which any community college is located, the mayor and council of the city in or adjacent to which a community college is located, and the board of trustees of the school district in such city, whether operating under special charter or general law, shall be and hereby are authorized and empowered to cooperate with the board of trustees of the community college district, and to permit the use, for community college purposes, of such buildings, grounds, athletic fields, gymnasiums, libraries, laboratories and other equipment and facilities, as are not at the time required for other purposes by such county, city or school district.

(2) The boards of trustees of community college districts shall be and hereby are authorized and empowered to cooperate with the county commissioners, mayors, city councils and school district boards of trustees identified in subsection (1) of this section and to permit the use, for such county, city and school district purposes, of such buildings, grounds, athletic fields, gymnasiums, libraries, laboratories and other equipment and facilities, as are not at the time required for other purposes by the community college.

**History.**

1939, ch. 32, § 14, p. 62; am. 2004, ch. 381, § 1, p. 1142.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2116.

**33-2116. Dormitory housing projects — Student union buildings — Finding and declaration of necessity.** — It is hereby declared: That in certain communities within the state wherein junior college districts have been created there are and will be insufficient housing and other facilities for students desiring to attend such junior colleges, and that it is in the community interest to provide adequate low-cost dormitories and student union buildings for students desiring to attend such institutions; that private sources cannot provide the types of such housing and facilities required for such students within the cost which said students may pay; that it is determined to be desirable that such dormitories and student union buildings be constructed from moneys obtained from other than ad valorem taxes and without any liability, debt or encumbrance upon junior college districts; and the necessity and the public interest in the provisions hereinafter enacted are hereby declared as a matter of legislative determination.

**History.**

1957, ch. 87, § 1, p. 137; am. 1961, ch. 30, § 1, p. 40.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2122.

Former § 33-2116 is now compiled as § 33-2115.

**JUDICIAL DECISIONS**

**Constitutionality.**

The statutes authorizing the dormitory housing commission to issue bonds and other obligations without approval of the voters are constitutional. *Wood v. Boise Junior College Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959).

**33-2117. Definitions.** — The following terms, wherever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) “Junior college housing commission” or “commission” shall mean any public corporation created by section 33-2118.

(b) “District” shall mean any junior college district organized and existing under chapter 21 of title 33, Idaho Code.

(c) “Governing body” shall mean the board of trustees of a junior college district.

(d) “Chairman” shall mean the chairman of the board of trustees of a junior college district.

(e) “Clerk” shall mean the clerk of the board of trustees of a junior college district.

(f) “Federal government” shall include the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

(g) “Dormitory project” shall mean the construction of dormitory or dormitories for occupation by students attending a junior college organized under chapter 21, title 33, Idaho Code, and shall include the construction of buildings for occupation by students and facilities for the feeding and recreation of students, equipment and furniture therefor and all matters usually incidental thereto, including the furnishing of sewer, heat, water service, landscaping, and streets or rights of ingress and egress. The term “dormitory project” also may be applied to the planning of the buildings and improvements, the acquisition of property, the construction, reconstruction, alteration and repair of the improvements, and all other work in connection therewith.

(h) “Students” shall mean persons duly enrolled as students in a junior college.

(i) “Bonds” shall mean any bonds, notes, interim certificates, debentures, or other obligations issued by a commission pursuant to this act.

(j) “Real property” shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgments, mortgage or otherwise, and the indebtedness secured by such liens.

(k) “Obligee of the commission” or “Obligee” shall include any bondholder, trustee or trustees for any bondholders, or lessors demising to the commission property used in connection with the dormitory project, or any assignee or assignees of such lessor’s interest, or any part thereof, and the federal government when it is a party to any contract with the commission.

(l) “Drop deadline” shall mean the last date by which a student can drop a class and still receive a one hundred percent (100%) refund of tuition and fees from the college. “Drop deadline” does not mean the withdrawal deadline.

(m) “Withdrawal deadline” shall mean the last date by which a student can drop a class and receive a “W” grade.

(n) “Out-of-district student” shall mean a student who is a resident of the state of Idaho but is not an in-district student as defined in [section 33-2110B, Idaho Code](#).

### **History.**

1957, ch. 87, § 2, p. 137; am. 2016, ch. 303, § 3, p. 853.

## **STATUTORY NOTES**

### **Cross References.**

Dormitory project includes student union buildings, student centers and facilities, § 33-2136.

### **Amendments.**

The 2016 amendment, by ch. 303, added subsections (l) through (n).

### **Compiler’s Notes.**

This section was formerly compiled as § 33-2123.



The term “this act” in the introductory paragraph and in subsection (i) refers to S.L. 1957, Chapter 87, which is compiled as §§ 33-2116 to 33-2135.

**33-2118. Creation of dormitory housing commissions.** — In each junior college district of the state there is hereby created an independent public body corporate and politic to be known as a dormitory housing commission which shall not be an agency of the junior college district; provided, however, that such commission shall not transact any business or exercise its powers hereunder until or unless the board of trustees of the junior college district, by proper resolution, shall declare at any time hereafter that there is need for a commission to function in such district. The determination as to whether or not there is such need for a commission to function (a) may be made by the governing body on its own motion or (b) shall be made by the governing body upon the filing of a petition signed by twenty-five (25) residents of the district asserting that there is need for a commission to function in such district and requesting that the governing body so declare.

The governing body shall adopt a resolution declaring that there is need for a dormitory or dormitories at the junior college operated by such district, and shall set out in said resolution its finding, setting forth the necessity for such dormitory or dormitories, including such facts as it may find proper supporting such resolution.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of, the commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder, upon proof of the adoption of a resolution by the board of trustees of a junior college district declaring the need for the commission. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for a commission and finds in substantially the foregoing terms (no further detail being necessary) that such conditions exist in the junior college district. A copy of such resolution, duly certified by the clerk, shall be admissible in evidence in any suit, action or proceeding.

**History.**

1957, ch. 87, § 3, p. 137.

## STATUTORY NOTES

### **Compiler's Notes.**

This section was formerly compiled as § 33-2124.

The words enclosed in parentheses so appeared in the law as enacted.

## JUDICIAL DECISIONS

### **Constitutionality.**

The statutes authorizing the dormitory housing commission to issue bonds and other obligations without approval of the voters are constitutional. *Wood v. Boise Junior College Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959).

**33-2119. Appointment, qualifications and tenure of commissioners.**

— When the board of trustees of a junior college district adopts a resolution as set forth in the preceding section, the clerk of said board shall promptly transmit a certified copy of said resolution to the governor of the state of Idaho, and the governor shall promptly thereafter appoint three (3) persons as commissioners of the commission created for said district. The governor shall certify to the clerk of the district the names of the persons so appointed, and the clerk shall notify said persons in writing of their appointment and the term for which each of them is appointed. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2) and three (3) years respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of 3 years, except that all vacancies shall be filled for the unexpired term. No commissioner may be an officer of [or] employee of the junior college district for which the commission is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services for the authority in any capacity, but he shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of his duties.

The powers of each commission shall be vested in the commissioners thereof in office from time to time. Two (2) commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present. The by-laws of the commission shall designate which of the commissioners appointed shall be the first chairman, and such chairman shall serve in the capacity of chairman until the expiration of his term of office as commissioner. When the office of the chairman thereafter becomes vacant, the commissioners shall select a chairman from their number. The commissioners shall select from their number a vice-chairman, and may

employ a secretary (who may be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The persons employed by the commission may be employees of the junior college district but shall not be trustees of the district. For such legal services as it may require, the commission may employ its own counsel. The commission may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper.

**History.**

1957, ch. 87, § 4, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2125.

The bracketed word “or” in the fourth sentence of the first paragraph of this section was inserted by the compiler to supply the probable intended term.

The words enclosed in parentheses so appeared in the law as enacted.

**33-2120. Interested commissioners or employees.** — No commissioner or employee shall acquire any interest, direct or indirect, in any dormitory project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any dormitory project. If any commissioner or employee owns or controls an interest, direct or indirect, in any property included or planned to be included, in any dormitory project, he immediately shall disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. Upon such disclosure such commissioner or employee shall not participate in any action affecting such property or have any further connection or position with the commission.

**History.**

1957, ch. 87, § 5, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2126.

**33-2121. Removal of commissioners.** — For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by the governor of Idaho upon receiving a resolution therefor by junior college trustees requesting such removal and setting out the grounds and reasons for such request, but a commissioner shall be removed only after he shall have been given a copy of the resolution at least ten (10) days prior to a hearing thereon if a hearing is requested to be held before the governor and has had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner pursuant to this section, a report of the proceeding, together with the charges and findings thereon, shall be filed in the office of the clerk of the district.

**History.**

1957, ch. 87, § 6, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2127.

**33-2122. Powers and duties of dormitory housing commissions.** — A dormitory housing commission shall constitute an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To sue and be sued; to have a corporate seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission, and to make and from time to time amend and repeal by-laws, rules and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the commission.

(b) Within the junior college district: to prepare, carry out, acquire, lease and operate dormitory housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any dormitory housing project or any part thereof; to contract for the management and supervision of dormitory housing projects, and in this connection the supervision of the students occupying a dormitory shall be delegated to the officers and employees of the junior college so that the supervision and conduct of such dormitory and its occupants are harmonious with the supervision and conduct of similar dormitories or other operations conducted by said junior college, it being considered that it is necessary that the junior college, at which the students occupying said dormitories are attending, shall have fit and proper control and responsibility of the discipline, supervision and conduct of such students; provided further that a lease may be entered into leasing the dormitory and properties to the junior college district under any terms and conditions deemed reasonable and desirable by the commissioner [commission] and the board of trustees of the junior college.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a dormitory housing project; and to include in any contract let in connection with a project any stipulations required by law relating to



wages and hours of labor, and comply with any conditions which the federal government may attach to its financial aid of the project.

(d) To own, hold and improve real and personal property; to purchase, lease, obtain options upon, acquire by gift, grant or bequest or devise or otherwise, any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operation of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guaranties from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on such insurance; to rent, manage and lease said dormitory housing projects within the purview and purpose of this act, and to establish and revise the rents or charges therefor; provided, however, that said rents shall be as uniform as may be possible under the terms and conditions of the obligations of such commission with similar dormitory rentals at said junior college;

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased shall be cancelled.

(f) To exercise all or any part or combination of powers herein granted and do all things necessary or incidental to the proper operation of this act.

No provisions of law with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to any commission unless the legislature shall specifically so state.

### **History.**

1957, ch. 87, § 7, p. 137.

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section was formerly compiled as § 33-2128.

Former § 33-2122 is now compiled as § 33-2116.

The bracketed insertion in the last sentence in subsection (b) was added by the compiler to supply the probable intended term.

The term “this act” throughout this section refers to S.L. 1957, Chapter 87, which is compiled as §§ 33-2116 to 33-2135.

**33-2123. Operation not for profit.** — It is hereby declared to be the policy of this state that each dormitory housing commission shall manage and operate or contract for the operation or management of its dormitory housing project in an efficient manner so as to enable it to fix the rentals to students at said junior college at the lowest possible rates consistent with providing decent, safe and sanitary accommodations, and no dormitory housing commission shall construct or operate any such project for profit or as a source of revenue to the junior college district; provided, however, that such commission shall fix the rentals for such dormitory at no higher rates than it shall find necessary in order to produce revenues (a) to pay, as the same become due, the principal and interest on the bonds of the commission, (b) to meet the cost of and to provide for maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the commission; and (c) to create (during not less than the six (6) years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter, and to maintain such reserve.

**History.**

1957, ch. 87, § 8, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2129.

Former § 33-2123 is now compiled as § 33-2117.

The words enclosed in parentheses so appeared in the law as enacted.

**33-2124. Planning, zoning and building laws.** — All dormitory housing projects of a commission shall be subject to the planning, zoning, sanitary and buildings laws, ordinances and regulations applicable to the locality in which the dormitory is situated. In the planning and location of any dormitory the commission shall take into consideration the general plan of the junior college campus and shall confer and cooperate with the board of trustees so that such dormitory, both in architecture and location, shall comply with the plan of development of said junior college.

**History.**

1957, ch. 87, § 9, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2130.

Former § 33-2124 is now compiled as § 33-2118.

**33-2125. Bonds.** — A dormitory housing commission shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. A commission shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. In order to carry out the purposes of this act, a commission may issue, upon proper resolution, bonds on which the principal and interest are payable (a) exclusively from the income and revenue of a dormitory project financed with the proceeds of such bonds; or (b) exclusively from such income and revenues together with grants and contributions from the federal government or other source in aid of such project; provided that the proceeds of grants of funds and moneys received or to be received from the United States of America or any agency or instrumentality thereof, pursuant to agreements entered into between the commission and the United States of America or any agency or instrumentality thereof prior to the issuance of the bonds, may be considered as revenue of the project for which such bonds are issued.

Neither the commissioners nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of a commission (and such bonds and obligations shall so state on their face) shall not be a debt or liability, direct or indirect, of the junior college district, the state, or any political subdivision thereof, and neither the junior college district, the state or any political subdivision thereof, shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds other than those of the commission or funds due the commission. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes.

### **History.**

1957, ch. 87, § 10, p. 137; am. 1970, ch. 80, § 1, p. 196.

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section was formerly compiled as § 33-2131.

Former § 33-2125 is now compiled as § 33-2119.

The term “this act” in the first paragraph refers to S.L. 1957, Chapter 87, which is compiled as §§ 33-2116 to 33-2135.

The words enclosed in parentheses so appeared in the law as enacted.

## **JUDICIAL DECISIONS**

### **Constitutionality.**

Those statutes authorizing the dormitory commission to issue bonds and obligations and to incur indebtedness are constitutional. *Wood v. Boise Junior College Dormitory Hous. Comm’n*, 81 Idaho 379, 342 P.2d 700 (1959).

**33-2126. Form and sale of bonds.** — When the commission shall find the proposed dormitory project or projects to be necessary for the proper operation of the junior college and economically feasible and such finding is recorded in the minutes of the commission, the commission shall be authorized by its resolution (and) [to issue bonds which] may be issued in one (1) or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture, or the bonds so issued may provide.

The bonds may be sold at public sale at not less than par; provided, however, that if such bonds are sold to the United States of America or an agency or instrumentality thereof, they may be sold at private sale.

In case any of the commissioners or officers of the commission whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signature shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

In any suit, action or proceedings involving the validity or enforceability of any bond of a commission or the security therefor, any such bond, reciting in substance that it has been issued by the commission to aid in financing a dormitory housing project to provide dwelling accommodations for students attending a junior college, shall be conclusively deemed to have been issued for a dormitory housing project of such character, and said project shall be conclusively deemed to have been planned, located and constructed in accordance with purposes and provisions of this act.

**History.**

1957, ch. 87, § 11, p. 137; am. 1970, ch. 80, § 2, p. 196.

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section was formerly compiled as § 33-2132.

Former § 33-2126 is now compiled as § 33-2120.

The parentheses and brackets in the first paragraph were added by the compiler to indicate language that seemingly should have been deleted (in parentheses) and added [in brackets] by the 1970 amendment of this section.

The term “this act”, as used in the third and fourth paragraphs, originated with S.L. 1970, Chapter 80, which is compiled as §§ 33-2125, 33-2126, and 33-2127.

The words enclosed in parentheses so appeared in the law as enacted.

## **JUDICIAL DECISIONS**

### **Constitutionality.**

Those statutes authorizing the dormitory commission to issue bonds and obligations and to incur indebtedness are constitutional. *Wood v. Boise Junior College Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959).



**33-2127. Provisions of bonds and trust indentures.** — In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, the commission, in addition to its other powers, shall have power:

(a) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence, the proceeds of grants of funds and moneys received or to be received from the United States of America or any agency or instrumentality thereof pursuant to agreements entered into between the commission and the United States of America or any agency or instrumentality thereof prior to the issuance of the bonds may be considered as revenues of the project as referred to in this chapter.

(b) To covenant against pledging all or any part of its rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any dormitory housing projects or any part thereof; and to covenant as to what other or additional debts or obligations may be incurred by it.

(c) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(d) To covenant (subject to the limitations contained in this act) as to the rents and fees to be charged in the operation of a dormitory housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(e) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(f) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(g) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(h) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said commission, to take possession of any dormitory housing project or part thereof, and (so long as said commission shall continue in default) to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the commission with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

(i) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein but not contrary hereto.

## **History.**

1957, ch. 87, § 12, p. 137; am. 1970, ch. 80, § 3, p. 196.

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section was formerly compiled as § 33-2133.

Former § 33-2127 is now compiled as § 33-2121.

The term “this act” in subsection (d) refers to S.L. 1957, Chapter 87, which is compiled as §§ 33-2116 to 33-2135.

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 4 of S.L. 1970, ch. 80 declared an emergency. Approved March 2, 1970.

## **JUDICIAL DECISIONS**

### **Constitutionality.**

Those statutes authorizing the dormitory commission to issue bonds and obligations and to incur indebtedness are constitutional. [Wood v. Boise Junior College Dormitory Hous. Comm'n, 81 Idaho 379, 342 P.2d 700 \(1959\).](#)

**33-2128. Remedies of an obligee of commission.** — An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee;

(a) By mandamus, suit, action or proceedings at law or in equity to compel said commission and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission or the district and the fulfillment of all duties imposed upon said authority by this act.

(b) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission.

**History.**

1957, ch. 87, § 13, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2134.

Former § 33-2128 is now compiled as § 33-2122.

The term “this act” at the end of subsection (a) refers to S.L. 1957, Chapter 87, which is compiled as §§ 33-2116 to 33-2135.

**33-2129. Additional remedies conferrable by commission.** — The commission shall have power by its resolution, trust indenture, lease or other contract, to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(a) To cause possession of any dormitory housing project or any part thereof to be surrendered to any such obligee, which possession may be retained by such bondholder or trustee so long as said commission shall continue in default.

(b) To obtain the appointment of a receiver of any dormitory housing project of said authority or any part thereof, and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such dormitory housing project or any part thereof and (so long as said commission shall continue to be in default) operate and maintain the same, and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligation of said commission as the court shall direct.

(c) To require said commission and the commissioners thereof to account as if it and they were the trustees of an express trust.

**History.**

1957, ch. 87, § 14, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2135.

Former § 33-2129 is now compiled as § 33-2123.

The words enclosed in parentheses so appeared in the law as enacted.

**33-2130. Construction of powers conferred.** — Nothing in this act or any other law shall be construed as authorizing a dormitory housing commission to levy or collect taxes or assessments, to create any indebtedness payable out of taxes or assessments, or in any manner to pledge the credit of the junior college district, the state or any subdivision thereof; nor shall any provision of this act or other law be construed as authorizing a dormitory housing commission to mortgage or otherwise encumber property of any kind, real, personal or mixed, or any interest therein, but this section shall not be construed as preventing the pledge of the revenues of a dormitory housing commission as authorized in this act.

**History.**

1957, ch. 87, § 15, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2136.

Former § 33-2130 is now compiled as § 33-2124.

The term “this act” near the beginning and at the end of this section refers to S.L. 1957, Chapter 87, which is compiled as §§ 33-2116 to 33-2135.

**33-2131. Exemption of property from execution sale.** — All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall any judgment against a dormitory housing commission be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees or revenues.

**History.**

1957, ch. 87, § 16, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2137.

Former § 33-2131 is now compiled as § 33-2125.

**33-2132. Aid from federal government.** — In addition to the powers conferred upon a dormitory housing commission by other provisions of this act, a dormitory housing commission is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any dormitory housing project within its area of operation, to take over or lease or manage any dormitory housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and to make such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this act to authorize every dormitory housing commission to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any dormitory housing project by such dormitory housing commission.

**History.**

1957, ch. 87, § 17, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2138.

Former § 33-2132 is now compiled as § 33-2126.

The term “this act” near the beginning and in the last sentence refers to S.L. 1957, Chapter 87, which is compiled as §§ 33-2116 to 33-2135.



**33-2133. Tax exemption.** — The property of a dormitory housing commission is declared to be public property used for essential public and educational purposes, and such property and a dormitory housing commission shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof; except that such commission may contract to pay special charges for sewerage, water, or other special services of like nature, in order to obtain such services, but not as a tax.

**History.**

1957, ch. 87, § 18, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2139.

Former § 33-2133 is now compiled as § 33-2127.

**RESEARCH REFERENCES**

**A.L.R.** — Tax exemption of property of educational body as extending to property used by personnel as living quarters. [55 A.L.R.3d 485](#).

**33-2134. Reports.** — At least once a year, the dormitory housing commission shall file with the clerk a report of its activities for the preceding year together with an accounting of its operations, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this act.

**History.**

1957, ch. 87, § 19, p. 137.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2140.

Former § 33-2134 is now compiled as § 33-2128.

The term “this act” at the end of the section refers to S.L. 1957, Chapter 87, which is compiled as §§ 33-2116 to 33-2135.

**33-2135. Termination — Reactivation.** — Upon the full payment of all its obligations, including bonds, notes, debentures or debts of any kind, the commissioners of a dormitory housing commission shall convey all properties held or owned by said authority to the junior college district and may, by appropriate resolution, declare their purposes at an end and terminated; upon approval of such resolution by the board of trustees of the junior college district the authority shall be declared inactive and the commissioners relieved of their duties; provided, however, that the commission may be reactivated for new projects, in the same manner as new commissioners are appointed in section 33-2118[, Idaho Code], and such new commissioners shall proceed with all the powers granted in this act.

**History.**

1957, ch. 87, § 20, p. 137.

**STATUTORY NOTES**

**Legislative Intent.**

Section 21 of S.L. 1957, ch. 87 read: “Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.”

**Compiler’s Notes.**

This section was formerly compiled as § 33-2141.

Former § 33-2135 is now compiled as § 33-2129.

The bracketed insertion near the end of the section was added by the compiler to confirm to the statutory citation style.

The term “this act” at the end of the section refers to S.L. 1957, Chapter 87, which is compiled as §§ 33-2116 to 33-2135.

**33-2136. Student centers and student union buildings.** — In addition to the powers conferred upon dormitory housing commissions by the other provisions of this chapter, a dormitory housing commission is empowered to acquire, construct, improve, add to, reconstruct, repair, maintain, operate and manage any or all student union buildings and student centers to consist of a building or buildings containing the facilities, equipment and furnishings common to student union buildings and student centers as such buildings and centers exist in the various colleges and universities in the United States, including but without limitation, facilities for the feeding and recreation of students and including all equipment, structures, appurtenances and facilities necessary to supplying such unions and centers with sewer, water, electric, heating, telephone and similar public utility facilities, landscaping, parking space, and streets, roads or alleys necessary for proper ingress and egress. Wherever the words “dormitory project” or “dormitory housing project” appear in this chapter, whether in the singular or plural, they shall be understood to include student union buildings, student centers and facilities as authorized in this section, either singly or in combination with one or more dormitories or similar housing facilities. Wherever the word “dormitory” appears in this chapter, whether singular or plural, it shall be understood to include a student union building or student union center and related facilities as authorized in this section.

**History.**

I.C., § 33-2142, as added by 1961, ch. 30, § 2, p. 40.

**STATUTORY NOTES**

**Compiler’s Notes.**

This section was formerly compiled as § 33-2142.

Former § 33-2136 is now compiled as § 33-2130.

**33-2137. Imposition and collection of student fees and charges.** — In each junior college district in which there shall now or hereafter exist a student union building or student center, there is hereby imposed upon each student in attendance at the college of such district a student union fee for the use and availability of such student union building or student center, the amount of which shall be fixed from time to time by the board of trustees of such district, such fee shall be in addition to all other fees authorized to be imposed by such board of trustees and shall not be subject to any statutory limit which may exist on total fees imposed by such board of trustees. Where such student union building or student center shall have been constructed by a junior college housing commission through the issuance of bonds under this chapter, the proceeds of such student union fees shall be regarded as one of the revenues derived from the operation of the student union building or student center, and such board of trustees and such junior college housing commission are authorized to enter into such agreements as they may see fit with respect to the amounts of such fees and the manner of the collection and disposition thereof. Any such agreement may provide that the fees so fixed shall not be diminished or decreased after the issuance of any such bonds until such bonds shall have been retired.

**History.**

I.C., § 33-2143, as added by 1961, ch. 30, § 3, p. 40.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2143.

Former § 33-2137 is now compiled as § 33-2131.

**33-2138. Housing commissions validated.** — All junior college housing commissions heretofore created or activated under the provisions of this chapter are hereby declared to be validly organized and legally created public bodies and all acts and proceedings heretofore taken in connection with the creation or activation of such commissions and taken by such commissions for the authorization, sale and issuance of the bonds of such commissions for the purpose of acquiring or constructing dormitory, housing or student union building or center projects, any or all, are hereby validated, confirmed and declared to be legally effective.

**History.**

I.C., § 33-2144, as added by 1961, ch. 30, § 4, p. 40.

**STATUTORY NOTES**

**Legislative Intent.**

Section 5 of S.L. 1961, ch. 30 read: “Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any one or more provisions of this act or the application thereof to any person or circumstance is held by any court of competent jurisdiction to be invalid, the remaining provisions hereof and the application of the provisions hereof to persons or circumstances other than those as to which they are held invalid shall not be affected by such holding.”

**Compiler’s Notes.**

This section was formerly compiled as § 33-2144.

Former § 33-2138 is now compiled as § 33-2132.

**Effective Dates.**

Section 6 of S.L. 1961, ch. 30 declared an emergency. Approved February 15, 1961.

**33-2139. State community college account created.** — There is hereby created a state community college account in the state operating fund in the state treasurer’s office to which shall be credited all moneys that may be transferred pursuant to section 23-404(1)(b)(iii), Idaho Code. The state treasurer shall make such disbursements from the account as may be ordered by the state board of education in accordance with the provisions of this act.

### **History.**

1967, ch. 350, § 1, p. 993; am. 1982, ch. 255, § 9, p. 653; am. 2012, ch. 35, § 1, p. 106; am. 2014, ch. 16, § 1, p. 23.

## **STATUTORY NOTES**

### **Amendments.**

The 2012 amendment, by ch. 35, substituted “community college” for “junior college” in the section heading and near the beginning of the first sentence, substituted “transferred to that account pursuant to **section 23-404(1)(b)(iii), Idaho Code**” for “appropriated, apportioned, or allocated to that account” at the end of the first sentence, and substituted “liquor division” for “board of education” in the last sentence.

The 2014 amendment, by ch. 16, substituted “that may be transferred” for “which may be transferred to that account” in the first sentence and “board of education” for “liquor division” in the second sentence.

### **Compiler’s Notes.**

Former § 33-2139 is now compiled as § 33-2133.

The term “this act” at the end of the section refers to S.L. 1967, ch. 350, which is codified as §§ 33-2139 and 33-2141 to 33-2143.

**33-2140. Allocation of fund — Formula. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1967, ch. 350, § 3, p. 993; am. 1969, ch. 178, § 1, p. 535, was repealed by S.L. 1977, ch. 61, § 1.

A former § 33-2140 is now compiled as § 33-2134.



**33-2141. Disbursement of funds — Method — Funds disbursed not considered in fixing tuition.** — Funds transferred to the state community college account shall be disbursed quarterly to the qualifying community college districts. Funds disbursed under this act shall not be considered by the board of trustees of any community college in fixing tuition of such college pursuant to section 33-2110, Idaho Code.

**History.**

1967, ch. 350, § 4, p. 993; am. 1974, ch. 260, § 1, p. 1682; am. 1987, ch. 142, § 1, p. 283; am. 2012, ch. 35, § 2, p. 106.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 35, rewrote the section, which formerly read: “Funds appropriated to the state junior college account shall be disbursed to the qualifying junior college districts as follows: fifty percent (50%) of the moneys in the account shall be disbursed on the twentieth day of July of each year and the remainder of the account shall be disbursed on the first day of September of each year. Funds disbursed under this act shall not be considered by the board of trustees of any junior college in fixing tuition of such college pursuant to [section 33-2110, Idaho Code](#).”

**Compiler’s Notes.**

Former § 33-2141 is now compiled as § 33-2135.

The term “this act” in the second sentence refers to S.L. 1967, Chapter 350, which is codified as §§ 33-2139 and 33-2141 to 33-2143.

**Effective Dates.**

Section 2 of S.L. 1974, ch. 260, provided the act should be in full force and effect on and after July 1, 1974.

**33-2142. Direct payment to board — Utilization.** — Disbursement shall be by direct payment to the governing board of such Junior College District which board shall utilize and disburse such funds in the furtherance of the academic program which such board is authorized by law to administer.

**History.**

1967, ch. 350, § 5, p. 993.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 33-2142 is now compiled as § 33-2136.

**33-2143. Disposition of funds when junior college ceases to operate.**

— Should any Junior College cease to operate as a Junior College existing under and by reason of Chapter 21 of Title 33, Idaho Code, during the biennium for which this Act is effective, the Board of Education of the State of Idaho shall compute the amount that such Junior College would be entitled to for the current year during which said Junior College would be inoperative based upon its enrollment for the preceding year during which it was operated and shall return the amount which would have been due such Junior College to the Treasurer of the State of Idaho to be placed in the General Fund of the State of Idaho by said Treasurer, provided, however, that if, during the biennium for which this Act is effective, any Junior College shall be made an institution of higher education of the State of Idaho within the jurisdiction and control of the State Board of Education, said board shall retain the amount which would have otherwise accrued to said Junior College and such funds so retained shall be added to other funds appropriated to said college and use [used] for the maintenance and operation thereof.

**History.**

1967, ch. 350, § 6, p. 993.

**STATUTORY NOTES**

**Cross References.**

State treasurer, § 67-1201 et seq.

**Compiler's Notes.**

Former § 33-2143 is now compiled as § 33-2137.

The term “this act” in two places refer to S.L. 1967, Chapter 350, which is codified as §§ 33-2139 and 33-2141 to 33-2143.

The bracketed word “used” near the end of the section was inserted by the compiler to supply the intended term.

**33-2144. Disbursement to public employee retirement fund.** — The disbursing of funds as provided by sections 33-2139 through 33-2143, Idaho Code, shall be subject to the payments required to be made by section 59-1324, Idaho Code, from the state community college account to the public employee retirement fund. Such payments shall be prior to the payment of funds from the state community college account to the several community college districts as provided by said statute.

**History.**

I.C., § 33-2144, as added by 1969, ch. 144, § 2, p. 466; am. 2013, ch. 187, § 4, p. 447.

**STATUTORY NOTES**

**Cross References.**

Public employee retirement fund, § 59-1311.

State community college account, § 33-2139.

**Amendments.**

The 2013 amendment, by ch. 187, substituted “section 59-1324” for “section 59-1332B,” substituted “community college account” for “junior college fund” twice, and substituted “community college districts” for “junior college districts.”

**Compiler’s Notes.**

Former § 33-2144 is now compiled as § 33-2138.



## **CHAPTER 22**

### **VOCATIONAL EDUCATION — FEDERAL AID**

#### **Section.**

33-2201. Assent to Smith-Hughes Act.

33-2202. State board for career technical education — Powers and duties.

33-2203. Further powers of board.

33-2204. Meetings of state board.

33-2205. State board to appoint administrator — Designation of assistants  
— Division of career technical education — Duties and powers.

33-2206. Reports.

33-2207. Custody and disbursement of moneys appropriated.

33-2208. Eastern Idaho technical college created. [Repealed.]

33-2209. College is body politic and corporate — Seal — Power to sue and  
be sued. [Repealed.]

33-2210. Programs and courses offered — Certificates and degrees.  
[Repealed.]

33-2211. Powers of state board for career technical education.

33-2212. Creation of advisory council — Members — Compensation.  
[Repealed.]

33-2213. Industry partner fund.

**33-2201. Assent to Smith-Hughes Act.** — The state of Idaho hereby accepts the benefits and provisions of an act of Congress approved February 23, 1917, entitled “An act to provide for the promotion of vocational education, to provide for the cooperation with the states and the promotion of such education in agriculture and the trades and industries; to provide for the cooperation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure,” commonly known as the Smith-Hughes Act.

**History.**

1919, ch. 53, § 1, p. 160; C.S., § 1002, I.C.A., § 32-1701.

**STATUTORY NOTES**

**Cross References.**

Federal aid for vocational rehabilitation, § 33-2301 et seq.

**Federal References.**

The Smith-Hughes Act, referred to in this section, was compiled as 20 U.S.C.S. §§ 11 to 28, but was repealed by Act Aug. 5, 1997, P.L. 105-33.

**33-2202. State board for career technical education — Powers and duties.** — (1) The state board of education is hereby designated as the state board for career technical education for the purpose of carrying into effect the provisions of the federal act known as the Smith-Hughes act, amendments thereto, and any subsequent acts now or in the future enacted by the congress affecting vocational education, and is hereby authorized to cooperate with the United States office of education, vocational division, or any other agency of the United States designated to administer such legislation, in the administration and enforcement of the provisions of said act, or acts, and to exercise such powers and perform such acts as are necessary to entitle the state of Idaho to receive the benefits of the same, and to execute the laws of the state of Idaho relative to career technical education; to administer the funds provided by the federal government and the state of Idaho under the provisions of this chapter for promotion of education in agricultural subjects, trade and industrial subjects, family and consumer science subjects and other subjects authorized by the board. Incident to the other powers and duties of the board for career technical education, the board may hold title to real property.

(2) As used in this title, unless otherwise specifically defined, the term “career technical education” means all secondary, postsecondary, and adult courses, programs, training, and services administered by the division of career technical education for occupations or careers that require other than a baccalaureate, master’s, or doctoral degree. As approved by the board, this term may also apply to specific courses or programs offered in grades 7 and 8 or offered by any approved public charter school that are delivered through traditional or virtual online instructional methods. This term may also apply to virtual, blended, or other career technical education programs.

(3) The courses, programs, training, and services include, but are not limited to, career, technical, and applied technology education. They are delivered through the career technical delivery system of public secondary schools, including approved public charter schools, irrespective of the delivery method, and postsecondary schools and colleges. The division of career technical education will include approved public charter schools and their students equally and without discrimination in reviewing, authorizing,



and funding the delivery of career technical education courses and programs, irrespective of the school's chosen instructional delivery method, as long as the chosen instructional delivery method is appropriate to the nature of the work as demonstrated by participation in a capstone course that meets recognized industry standards. Career technical education programs may be delivered by traditional, blended, or virtual models and must meet the required elements as outlined in the state standards for secondary programs. Virtual programs will utilize post-capstone interviews conducted by industry professionals to demonstrate technical proficiency and to satisfy face-to-face requirements. Interviews will be based on students' needs and may be conducted face-to-face or electronically.

### **History.**

1919, ch. 53, part of § 2, p. 160; C.S., § 1003; I.C.A., § 32-1702; am. 1963, ch. 150, § 1, p. 451; am. 1970, ch. 4, § 1, p. 6; am. 1999, ch. 329, § 5, p. 852; am. 2016, ch. 25, § 11, p. 35; am. 2018, ch. 95, § 1, p. 203; am. 2019, ch. 298, § 2, p. 881.

## **STATUTORY NOTES**

### **Cross References.**

Division of career technical education, § 33-2205.

Industrial commission, duty to cooperate with, § 72-517.

Powers of state board for career technical education, § 33-2211.

### **Amendments.**

The 2016 amendment, by ch. 25, substituted added the subsection designations to the existing paragraphs and substituted “career technical” for “professional-technical” throughout the section.

The 2018 amendment, by ch. 95, substituted “family and consumer science” for “home economics” near the end of subsection (1); added the last sentence in subsection (2); and designated the former last sentence of the section as subsection (3) and substituted “career, technical and” for “vocational, technical and” therein.

The 2019 amendment, by ch. 298, in subsection (2), inserted “all” near the beginning of the first sentence, added “or offered by any approved public charter school that are delivered through traditional or virtual online instructional methods” at the end of the next-to-last sentence, and added the last sentence; and rewrote subsection (3), which formerly read: “The courses, programs, training and services include, but are not limited to, career, technical and applied technology education. They are delivered through the career technical delivery system of public secondary and postsecondary schools and colleges.”

### **Federal References.**

The Smith-Hughes Act, referred to in the first sentence of this section, was compiled as 20 U.S.C.S. §§ 11 to 28, but was repealed by Act Aug. 5, 1997, P.L. 105-33.

### **Compiler’s Notes.**

The office within the United States department of education responsible for vocational education, referred to in subsection (1), is the office of career, technical, and adult education. See <https://www2.ed.gov/about/offices/list/ovae/index.html>.

### **Effective Dates.**

Section 2 of S.L. 1970, ch. 4 declared an emergency. Approved March 6, 1970.

**33-2203. Further powers of board.** — The board shall have full power to formulate plans for the promotion of career technical education in such subjects as are an essential and integral part of the public school system of the state of Idaho, and to provide for the preparation of teachers of such subjects. It shall have full power to fix the compensation of such officials and assistants as may be necessary to administer the federal act herein referred to and to pay such compensation and other necessary expenses of administration from funds appropriated in this chapter and from money received under the provisions of the federal act. It shall have authority to make studies and investigations relating to career technical education in such subjects, to promote and aid in the establishment of local communities of schools, departments or classes, giving training in such subjects; to cooperate with the local communities in the maintenance of such schools, departments or classes; to prescribe qualifications for teachers, directors and supervisors for such subjects, and to have full authority to provide for the certification of such teachers, directors and supervisors, subject to the laws and rules governing the state board of education; to cooperate in the maintenance of classes supported and controlled by the public for the preparation of teachers, directors and supervisors of such subjects, or to maintain such classes under its own direction and control; and to establish and determine by general rule the qualifications to be possessed by persons engaged in the training of career technical teachers.

**History.**

1919, ch. 53, part of § 2, p. 161; C.S., § 1004; I.C.A., § 32-1703; am. 1999, ch. 329, § 6, p. 852; am. 2016, ch. 25, § 12, p. 35.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 25, substituted “The board” for “It” at the beginning of the first sentence; and, in the last sentence, substituted “career technical” for “professional-technical” near the beginning and at the end.

**Federal References.**

The “federal act”, referred to in the second sentence, is the Smith-Hughes Act, which was codified as 20 U.S.C.S. §§ 11 to 28, but which was repealed by Act Aug. 5, 1997, P.L. 105-33.

**33-2204. Meetings of state board.** — The state board of education, when acting as the state board for career technical education, shall hold four (4) regular meetings annually at such time and place as may be directed by said board, but special meetings may be called at any time and at a place designated in said call by the president.

**History.**

1919, ch. 53, part of § 2, p. 161; C.S., § 1005; I.C.A., § 32-1704; am. 1999, ch. 329, § 7, p. 852; am. 2016, ch. 25, § 13, p. 35.

**STATUTORY NOTES**

**Cross References.**

Meetings of state board of education, § 33-104.

**Amendments.**

The 2016 amendment, by ch. 25, substituted “board for career technical education” for “board for professional-technical education.”

**33-2205. State board to appoint administrator — Designation of assistants — Division of career technical education — Duties and powers.** — (1) The state board of education shall appoint a person to serve as an administrator to the state board for career technical education, who shall be known as the administrator of career technical education. The administrator shall designate, by and with the advice and consent of the state board for career technical education, such assistants as may be necessary to properly carry out the provisions of the federal acts and this chapter for the state of Idaho. The administrator and such assistants shall together be known as the division of career technical education.

(2) The administrator of career technical education shall also carry into effect such rules as the state board for career technical education may adopt, shall coordinate all efforts in career technical education approved by the board with the executive secretary, and shall prepare such reports concerning the condition of career technical education in the state as the state board for career technical education may require.

(3) The division of career technical education may coordinate with the Idaho digital learning academy to develop any statewide virtual career technical education course delivery. Districts may choose to enroll in the course offered by the Idaho digital learning academy or may use their own curriculum providers.

(4) The division of career technical education shall maintain a list of secondary career technical education pathways that can be delivered by traditional means or entirely online, or a combination of both methods. The division of career technical education shall develop a methodology for the funding of each pathway delivery type. For those pathways that are able to be delivered entirely online, there shall be a presumption that they shall receive the same funding as for traditional career technical education pathways; however, actual funding shall be based upon actual approved costs, not to exceed the cost of delivering these pathways in a traditional setting.

(5) The division of career technical education may provide incentives to Idaho public colleges and universities offering career technical programs

that, in coordination with the division, align their foundational courses that are required in the same or substantially similar programs of study so as to achieve uniformity and transferability in the core program requirements at all such public colleges and universities. Postsecondary credits earned by a student in a career technical education program shall transfer at the full credit value to any public Idaho college or university in a like program of study and such postsecondary credits will be treated by any such public college or university as satisfying specific course requirements in such program of study.

(6) The board shall authorize the issuance of career technical education certificates to individuals who seek to teach in career-related subjects and who:

(a) Submit to a criminal history check as described in [section 33-130, Idaho Code](#), and meet at least one (1) of the following criteria:

(i) Hold or have held an approved industry certification in a field closely related to the content area in which the individual seeks to teach as defined by the division of career technical education;

(ii) Demonstrate a minimum of six thousand (6,000) hours of professional experience in a field closely related to the content area in which the individual seeks to teach; or

(iii) Hold a baccalaureate degree in a field closely related to the content area in which the individual seeks to teach and demonstrate two thousand (2,000) hours of professional experience in a field closely related to the content area in which the individual seeks to teach; and

(b) Complete an educator training program or courses approved by the division of career technical education.

(7) The state board of education may promulgate rules to implement the provisions of this section.

### **History.**

1919, ch. 53, § 3, p. 161; C.S., § 1006; I.C.A., § 32-1705; am. 1963, ch. 150, § 2, p. 451; am. 1974, ch. 10, § 13, p. 49; am. 1999, ch. 329, § 8, p. 852; am. 2015, ch. 150, § 1, p. 540; am. 2016, ch. 25, § 14, p. 35; am. 2018,

ch. 96, § 2, p. 204; am. 2019, ch. 298, § 3, p. 881; am. 2020, ch. 151, § 2, p. 450.

## **STATUTORY NOTES**

### **Cross References.**

Idaho digital learning academy, § 33-5501 et seq.

State board of education, § 33-101 et seq.

### **Amendments.**

The 2015 amendment, by ch. 150, in the section heading, inserted “Division of professional-technical education” and “and powers”; designated the existing provisions of the section as subsections (1) and (2) and added subsections (3) through (5); and, in subsection (1), added the last sentence.

The 2016 amendment, by ch. 25, substituted “career technical” for “professional-technical” throughout the section.

The 2018 amendment, by ch. 96, in the last sentence of subsection (4), deleted “The purpose of uniformity is to ensure that” at the beginning, deleted “to ensure that” following “program of study and”, and substituted “such program” for “the student’s program”; and deleted “subsections (3) and (4) of” preceding “this section” in subsection (5).

The 2019 amendment, by ch. 298, rewrote subsection (3), which formerly read: “The division of career technical education shall coordinate with the Idaho digital learning academy to provide approved online career technical education courses to any Idaho school district”, added present subsection (4), and redesignated former subsections (4) and (5) as subsections (5) and (6).

The 2020 amendment, by ch. 151, inserted “technical” near the beginning of the first sentence in subsection (4); added present subsection (6); and redesignated former subsection (6) as subsection (7).

### **Effective Dates.**

Section 21 of S.L. 1974, ch. 10, provided the act should be in full force and effect on and after July 1, 1974.



**33-2206. Reports.** — The state board for career technical education shall make annually to the governor and legislature a report of all moneys expended for career technical education both from state and federal funds, and shall include such annual report in the annual report of the state board of education.

**History.**

1919, ch. 53, § 6, p. 162; C.S., § 1007; I.C.A., § 32-1706; am. 1976, ch. 9, § 2, p. 25; am. 1999, ch. 329, § 9, p. 852; am. 2016, ch. 25, § 15, p. 35.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 25, substituted “career technical education” for “professional-technical education” twice in the section.

**33-2207. Custody and disbursement of moneys appropriated.** — The state treasurer is hereby designated and appointed custodian of all moneys received by the state from the appropriation made by said act of congress, and he is authorized to receive and to provide for the proper custody of the same and to make disbursement thereof in the manner provided in the said act, and for the purposes therein specified. He shall also pay out any moneys appropriated by the state of Idaho for the promotion of career technical education in accordance with the provisions of sections 33-2201 through 33-2207, Idaho Code, and upon the order of the state board for career technical education.

**History.**

1919, ch. 53, § 4, p. 162; C.S., § 1009; I.C.A., § 32-1707; am. 1999, ch. 329, § 10, p. 852; am. 2016, ch. 25, § 16, p. 35.

**STATUTORY NOTES**

**Cross References.**

State treasurer, § 67-1201 et seq.

**Amendments.**

The 2016 amendment, by ch. 25, substituted “career technical education” for “professional-technical education” twice in the section.

**Federal References.**

The act of Congress, referred to in this section as “said act,” is the Smith-Hughes Act which was compiled as 20 U.S.C.S. §§ 11 to 28, but which was repealed by Act Aug. 5, 1997, P.L. 105-33.

**33-2208. Eastern Idaho technical college created. [Repealed.]**

Repealed by S.L. 2018, ch. 17, § 2, effective July 1, 2018.

**History.**

1970, ch. 71, § 1, p. 183; am. 1972, ch. 110, § 1, p. 223; am. 1989, ch. 45, § 1, p. 57; am. 1998, ch. 85, § 1, p. 294; am. 1999, ch. 329, § 11, p. 852; am. 2016, ch. 25, § 17, p. 35.

**STATUTORY NOTES**

**Compiler's Notes.**

In May 2017, Bonneville County voters approved a taxing district, officially creating Idaho's fourth comprehensive community college, College of Eastern Idaho (CEI). With the creation of the new community college, the provisions in the Idaho Code relating to eastern Idaho technical college have been legislatively removed.

**33-2209. College is body politic and corporate — Seal — Power to sue and be sued. [Repealed.]**

Repealed by S.L. 2018, ch. 17, § 2, effective July 1, 2018.

**History.**

1970, ch. 71, § 2, p. 183; am. 1972, ch. 110, § 2, p. 223; am. 1989, ch. 45, § 2, p. 57; am. 1999, ch. 329, § 12, p. 852; am. 2016, ch. 25, § 18, p. 35.

**STATUTORY NOTES**

**Compiler's Notes.**

In May 2017, Bonneville County voters approved a taxing district, officially creating Idaho's fourth comprehensive community college, College of Eastern Idaho (CEI). With the creation of the new community college, the provisions in the Idaho Code relating to eastern Idaho technical college have been legislatively removed.

**33-2210. Programs and courses offered — Certificates and degrees.  
[Repealed.]**

Repealed by S.L. 2018, ch. 17, § 2, effective July 1, 2018.

**History.**

1970, ch. 71, § 3, p. 183; am. 1972, ch. 110, § 3, p. 223; am. 1989, ch. 45, § 3, p. 57; am. 1998, ch. 85, § 2, p. 294; am. 1999, ch. 329, § 13, p. 852; am. 2016, ch. 25, § 19, p. 35.

**STATUTORY NOTES**

**Compiler's Notes.**

In May 2017, Bonneville County voters approved a taxing district, officially creating Idaho's fourth comprehensive community college, College of Eastern Idaho (CEI). With the creation of the new community college, the provisions in the Idaho Code relating to eastern Idaho technical college have been legislatively removed.

**33-2211. Powers of state board for career technical education.** — The state board for career technical education shall have the power:

(1) To adopt rules for its own government and any career technical or vocational rehabilitation program, including programs under chapters 22 and 23, title 33, Idaho Code;

(2) To employ professional and nonprofessional persons and to prescribe their qualifications;

(3) To acquire and hold, and to dispose of, real and personal property, and to construct, repair, remodel and remove buildings;

(4) To contract for the acquisition, purchase or repair of buildings, in the manner prescribed for trustees of school districts pursuant to [section 33-601, Idaho Code](#);

(5) To dispose of real and personal property in the manner prescribed for trustees of school districts pursuant to [section 33-601, Idaho Code](#);

(6) To convey and transfer real property of the college upon which no buildings used for instruction are situated to nonprofit corporations, school districts, community college housing commissions, counties or municipalities, with or without consideration; to rent real or personal property for the use of the college, its students or faculty for such terms as may be determined by the state board for career technical education; and to lease real or personal property of the college not actually in use for instructional purposes on such terms as may be determined by the state board for career technical education;

(7) To acquire, hold, and dispose of water rights;

(8) To accept grants or gifts of money, materials, or property of any kind from any governmental agency or from any person, firm, or association on such terms as may be determined by the grantor;

(9) To cooperate with any governmental agency or any person, firm or association in the conduct of any educational program; to accept grants from any source for the conduct of such program, and to conduct such program on, or off, campus;

(10) To employ a president of the college and, with his advice, to appoint such assistants, instructors, specialists and other employees as are required for the operation of the college; to fix salaries and prescribe duties; and to remove the president or other employees in accordance with the policies and rules of the state board of education;

(11) With the advice of the president, to prescribe the courses and programs of study, the requirements for admission, the time and standards for completion of such courses and programs, and to grant certificates or associate of applied science degrees for those students entitled thereto;

(12) To employ architects or engineers in planning the construction, remodeling or repair of any building or property and, whenever no other agency is designated by law so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof; and

(13) To have at all times general supervision and control of all property, real and personal, appertaining to the college, and to insure the same.

### **History.**

1970, ch. 71, § 4, p. 183; am. 1972, ch. 110, § 4, p. 223; am. 1989, ch. 45, § 4, p. 57; am. 1998, ch. 60, § 1, p. 217; am. 1998, ch. 85, § 3, p. 294; am. 1999, ch. 329, § 14, p. 852; am. 2005, ch. 65, § 1, p. 228; am. 2006, ch. 84, § 1, p. 247; am. 2016, ch. 25, § 20, p. 35; am. 2016, ch. 108, § 2, p. 312; am. 2018, ch. 17, § 3, p. 22.

## **STATUTORY NOTES**

### **Cross References.**

Compact for cooperation in higher education, § 33-3601 et seq.

Powers and duties of state board for career technical education, § 33-2202.

Public employees retirement system, § 59-1301 et seq.

Real and personal property, acquisition, use or disposal of by trustees of school districts, § 33-601.

### **Amendments.**

This section was amended by two 1998 acts which appear to be compatible and have been compiled together.

The 1998 amendment, by ch. 60, § 1, in subdivision 1. deleted “and regulations” preceding “for its own”; and in subdivisions 10. and 11. substituted “president” for “superintendent.”

The 1998 amendment, by ch. 85, § 3, in subdivision 1. deleted “and regulations” preceding “for its own”; and in subdivision 11. substituted “or associate of applied science degrees” for “of completion.”

The 2006 amendment, by ch. 84, rewrote subsection 1, which formerly read: “To adopt rules for its own government and the government of the Eastern Idaho Technical College.”

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 25, changed the style of the subsection designations and substituted “career technical” for “professional-technical” throughout the section.

The 2016 amendment, by ch. 108, added “pursuant to [section 33-601, Idaho Code](#)” at the end of subsections (4) and (5).

The 2018 amendment, by ch. 17, deleted “the government of the Eastern Idaho Technical College” following “its own government” near the beginning of subsection (1).



**33-2212. Creation of advisory council — Members — Compensation.  
[Repealed.]**

Repealed by S.L. 2018, ch. 17, § 4, effective July 1, 2018.

**History.**

1970, ch. 71, § 5, p. 183; am. 1972, ch. 110, § 5, p. 223; am. 1980, ch. 247, § 26, p. 582; am. 1989, ch. 45, § 5, p. 57; am. 1999, ch. 329, § 15, p. 852; am. 2016, ch. 25, § 21, p. 35.

**STATUTORY NOTES**

**Compiler's Notes.**

In May 2017, Bonneville County voters approved a taxing district, officially creating Idaho's fourth comprehensive community college, College of Eastern Idaho (CEI). With the creation of the new community college, the provisions in the Idaho Code relating to eastern Idaho technical college have been legislatively removed.

**33-2213. Industry partner fund.** — (1) There is hereby established in the state treasury the industry partner fund. The fund shall consist of moneys made available through legislative transfers and appropriations, and from any other source. The Idaho technical college leadership council (TCLC) and the administrator of the division of professional-technical [career technical] education shall together administer the fund pursuant to the provisions of this section, and for the purpose of providing timely access to relevant college credit and noncredit training and support projects. If practicable, such training and projects may result in Idaho public college credits, certificates, certifications, qualifications or microcertifications of value toward postsecondary certificates or degrees.

(2) The professional-technical [career technical] colleges may work with regional industry partners to provide a rapid response to gaps in skills and abilities using moneys from the fund. Any professional-technical [career technical] college seeking to use moneys from the fund for this purpose must submit a proposal documenting established needs to the TCLC and administrator for approval. The TCLC and administrator shall consider the proposals in light of regional demand, labor market information, wage thresholds, impact potential and degree of employer commitment. Preference will be given to proposals with multiple employers, number of impacted workers and demonstrated commitment. Demonstrated commitment must include a promissory contribution, either in terms of cash or in-kind contribution to the project cost with highest consideration given to match proposals. Within thirty (30) days of receipt of a proposal, the TCLC and administrator shall notify in writing the professional-technical [career technical] college as to whether the proposal has been approved.

(3) The state board for professional-technical [career technical] education may promulgate rules to implement the provisions of this section.

(4) No later than February 1 of each year, the TCLC and the administrator of the division of professional-technical [career technical] education shall provide a report to the joint finance-appropriations committee, the legislative services office, budget and policy analysis, the division of financial management within the governor's office and to the

education committees of the senate and the house of representatives, details regarding the proposals submitted, the proposals approved, the expenditures made from the industry partner fund and any other information requested by the legislature.

**History.**

I.C., § 33-2213, as added by 2016, ch. 266, § 1, p. 719.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions throughout the section were added by the compiler to correct the name of the referenced agency. See § 33-2202.



## **CHAPTER 23**

### **VOCATIONAL REHABILITATION — FEDERAL AID**

#### **Section.**

33-2301. Acceptance of federal acts.

33-2302. Custody and disbursement of funds.

33-2303. Powers of board in carrying out provisions.

33-2304. Plan of cooperation.

33-2305. Gifts and donations — Receipt and disposition.

33-2306. Report of state board.

33-2307. Terminating financial assistance for persons suffering from renal diseases — Legislative intent. [Repealed.]

33-2308. Termination of vocational rehabilitation program to provide treatment to persons suffering from chronic renal diseases. [Repealed.]

**33-2301. Acceptance of federal acts.** — The state of Idaho hereby renews its acceptance of the provisions and benefits of the act of Congress, entitled “An act to provide for the promotion of vocational rehabilitation of persons with disabilities, other than those who are legally blind, and their return to employment,” and further accepts “The Rehabilitation Act of 1973,” P.L. 93-112, 93rd Congress, as amended by the “Workforce Innovation and Opportunity Act of 2014,” P.L. 113-128, 113th Congress, and all subsequent amendments thereto, and will observe and comply with all requirements of such acts.

### **History.**

1921, ch. 44, § 1, p. 70; I.C.A., § 32-1801; am. 1957, ch. 139, § 1, p. 231; am. 1967, ch. 7, § 1, p. 10; am. 1969, ch. 272, § 1, p. 814; am. 1974, ch. 105, § 1, p. 1274; am. 1978, ch. 12, § 1, p. 24; am. 1980, ch. 254, § 1, p. 666; am. 1985, ch. 6, § 1, p. 10; am. 1987, ch. 4, § 1, p. 4; am. 1993, ch. 183, § 1, p. 464; am. 1994, ch. 46, § 1, p. 74; am. 1995, ch. 2, § 1, p. 9; am. 1999, ch. 14, § 1, p. 22; am. 2016, ch. 41, § 1, p. 91.

## **STATUTORY NOTES**

### **Cross References.**

Federal aid for vocational education, § 33-2201 et seq.

### **Amendments.**

The 2016 amendment, by ch. 41, substituted “as amended by the ‘Workforce Innovation and Opportunity Act of 2014,’ [P.L. 113-128](#), 113th Congress, and all subsequent amendments thereto” for “and ‘The Rehabilitation Act Amendments of 1998,’ [P.L. 105-220](#), 105th Congress” near the end of the section.

### **Federal References.**

The act of Congress, referred to in this section, as “An act to provide for the promotion of vocational rehabilitation of persons with disabilities, other than those who are legally blind, and their return to employment” is Act

June 2, 1920, ch. 219, [41 Stat. 735](#), as amended, which was repealed by Act Sept. 26, 1973, [P.L. 93-112](#), Title V, § 500(a).

The Rehabilitation Act of 1973, referred to in this section, is generally compiled as [29 U.S.C.S. § 701 et seq.](#)

The Workforce Innovation and Opportunity Act, referred to in this section, is codified as [29 U.S.C.S. § 3101 et seq.](#)

### **Effective Dates.**

Section 2 of S.L. 1957, ch. 139, declared an emergency. Approved March 7, 1957.

Section 2 of S.L. 1967, ch. 7 declared an emergency. Approved February 2, 1967.

Section 2 of S.L. 1969, ch. 272 declared an emergency. Approved March 27, 1969.

Section 2 of S.L. 1974, ch. 105 declared an emergency. Approved March 27, 1974.

## **JUDICIAL DECISIONS**

**Cited in:** [Fuller v. State Dep't of Educ. Div. of Vocational Rehabilitation, Inc., 117 Idaho 126, 785 P.2d 690 \(Ct. App. 1990\).](#)

## **RESEARCH REFERENCES**

**A.L.R.** — Construction and effect of § 504 of the Rehabilitation Act of 1973 ([29 USCS § 794](#)) prohibiting discrimination against otherwise qualified handicapped individuals in specified programs or activities. [44 A.L.R. Fed. 148.](#)

**33-2302. Custody and disbursement of funds.** — The state treasurer is hereby designated and appointed custodian of all moneys received by the state from appropriations made by the congress of the United States for the vocational rehabilitation of persons with disabilities, other than those who are legally blind, and is authorized to receive and provide for the proper custody of the same and to make disbursements therefrom upon the order of the state board herein designated.

**History.**

1921, ch. 44, § 2, p. 70; I.C.A., § 32-1802; am. 1994, ch. 46, § 2, p. 74.

**STATUTORY NOTES**

**Cross References.**

State treasurer, § 67-1201 et seq.



**33-2303. Powers of board in carrying out provisions.** — (1) The board heretofore designated as the state board for career technical education is hereby designated as the state board for the purpose of providing for the vocational rehabilitation of persons with disabilities, other than those who are legally blind, and is empowered and directed to cooperate in the administration of said act of congress; to prescribe and provide such courses of vocational services as may be necessary for the vocational rehabilitation of persons with disabilities, other than those who are legally blind, and provide for the supervision of such services; to appoint such assistants as may be necessary to administer this act and said act of congress in this state; to fix the compensation of such assistants and to direct the disbursement and administer the use of all funds provided by the federal government and the state of Idaho for the vocational rehabilitation of such persons.

(2) In order to provide vocational rehabilitation services, the board for career technical education may enter into, or authorize a state vocational rehabilitation agency over which it has oversight to enter into, agreements with any person, corporation or association, approved by the board for career technical education to provide such services.

(3) Any person, corporation or association may make application to the board for career technical education for approval and certification to provide vocational rehabilitation services. The board for career technical education may either grant or deny certification or revoke certification previously granted after investigation of the applicant, in accordance with standards as set forth in rules promulgated by the board for career technical education, and consistent with national accreditation bodies. The board for career technical education may authorize a state vocational rehabilitation agency over which it has oversight to provide the approvals or certifications described in this subsection.

### **History.**

1921, ch. 44, § 3, p. 70; I.C.A., § 32-1803; am. 1994, ch. 46, § 3, p. 74; am. 1999, ch. 329, § 16, p. 852; am. 2006, ch. 84, § 2, p. 247; am. 2015, ch. 244, § 21, p. 1008; am. 2016, ch. 25, § 22, p. 35.

## **STATUTORY NOTES**

### **Cross References.**

Industrial commission, duty to cooperate with, § 72-517.

State board for career technical education, § 33-2202.

### **Amendments.**

The 2006 amendment, by ch. 84, added the subsection (1) designation; and added subsections (2) and (3).

The 2015 amendment, by ch. 244, substituted “board for professional-technical education” for “board of professional-technical education” throughout the section.

The 2016 amendment, by ch. 25, substituted “”career technical education“ for ”professional-technical education“ throughout the section.

### **Federal References.**

“Said act of Congress,” referred to in subsection (1), means Act June 2, 1920, ch. 219, as amended, which was repealed by Act Sept. 26, 1973, **P.L. 93-112**, Title V, § 500(a). But now see The Rehabilitation Act of 1973 and the Workforce Innovation and Opportunity Act of 2014, cited in § 33-2301.

### **Compiler’s Notes.**

The term “this act,” referred to in subsection (1), means S.L. 1921, Chapter 44, which is compiled as §§ 33-2301 to 33-2306.

**33-2304. Plan of cooperation.** — It shall be the duty of the state board empowered to cooperate as aforesaid with the appropriate state agencies to formulate a plan of cooperation in accordance with the provisions of this act and said act of Congress.

**History.**

1921, ch. 44, § 4, p. 70; I.C.A., § 32-1804; am. 1974, ch. 10, § 14, p. 49; am. 1994, ch. 46, § 4, p. 74.

**STATUTORY NOTES**

**Cross References.**

Industrial commission, duty to cooperate with, § 72-517.

**Federal References.**

“Said act of Congress,” referred to at the end of this section, means Act June 2, 1920, ch. 219, as amended, which was repealed by Act Sept. 26, 1973, **P.L. 93-112**, Title V, § 500(a). But now see The Rehabilitation Act of 1973 and the Workforce Innovation and Opportunity Act, cited in § 33-2301.

**Compiler’s Notes.**

The term “this act,” referred to in this section, means S.L. 1921, Chapter 44, which is compiled as §§ 33-2301 to 33-2306.

**Effective Dates.**

Section 21 of S.L. 1974, ch. 10, provided the act should be in full force and effect on and after July 1, 1974.

**JUDICIAL DECISIONS**

**Cited in:** **Reifsteck v. Lantern Motel & Cafe**, 101 Idaho 699, 619 P.2d 1152 (1980).

**RESEARCH REFERENCES**

**A.L.R.** — Construction and effect of § 504 of the Rehabilitation Act of 1973 (29 USCS § 794) prohibiting discrimination against otherwise qualified handicapped individuals in specified programs or activities. 44 A.L.R. Fed. 148.

**33-2305. Gifts and donations — Receipt and disposition.** — The state board designated to cooperate as aforesaid in the administration of the federal act, is hereby authorized and empowered to receive such gifts and donations, either from public or private sources, as may be offered unconditionally or under such conditions related to the vocational rehabilitation of persons with disabilities, other than those who are legally blind, as in the judgment of the state board are proper and consistent with the provisions of sections 33-2301 through 33-2306, Idaho Code. All the moneys received as gifts or donations shall be deposited in the state treasury and shall constitute a permanent fund to be called the special fund for the vocational rehabilitation of disabled persons, to be used by the said board to defray the expenses of vocational rehabilitation in special cases, including the payment of necessary expenses of persons undergoing services. A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted annually to the governor of the state and to the governor and legislature biennially by the state board.

**History.**

1921, ch. 44, § 5, p. 70; I.C.A., § 32-1805; am. 1994, ch. 46, § 5, p. 74.

**STATUTORY NOTES**

**Federal References.**

“[T]he federal act,” referred to in the first sentence, means Act June 2, 1920, ch. 219, as amended, which was repealed by Act Sept. 26, 1973, **P.L. 93-112**, Title V, § 500(a). See § 33-2301. But now see The Rehabilitation Act of 1973 and the Workforce Innovation and Opportunity Act of 2014, cited in § 33-2301.

**33-2306. Report of state board.** — The state board for career technical education shall make annually to the governor and legislature a report of all moneys expended for the vocational rehabilitation of persons with disabilities, other than those who are legally blind, both from state and federal funds, and shall include such annual report in the annual report of the state board of education.

**History.**

1921, ch. 44, § 6, p. 70; I.C.A., § 32-1806; am. 1976, ch. 9, § 3, p. 25; am. 1994, ch. 46, § 6, p. 74; am. 1999, ch. 329, § 17, p. 852; am. 2016, ch. 25, § 23, p. 35.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 25, substituted “state board for career technical education” for “state board for professional-technical education” at the beginning of the section.

**33-2307. Terminating financial assistance for persons suffering from renal diseases — Legislative intent. [Repealed.]**

Repealed by S.L. 2012, ch. 264, § 3, effective July 1, 2013.

**History.**

1970, ch. 72, § 1, p. 186; am. 2012, ch. 264, § 1, p. 733.

**33-2308. Termination of vocational rehabilitation program to provide treatment to persons suffering from chronic renal diseases. [Repealed.]**

Repealed by S.L. 2012, ch. 264, § 4, effective July 1, 2013.

**History.**

1970, ch. 72, § 2, p. 186; am. 1999, ch. 329, § 18, p. 852; am. 2008, ch. 199, § 1, p. 644; am. 2012, ch. 264, § 2, p. 733.





## **CHAPTER 24**

### **POSTSECONDARY AND PROPRIETARY SCHOOLS**

Section.

33-2401. Definitions.

33-2402. Registration of postsecondary educational institutions.

33-2403. Registration of proprietary schools.

33-2404. Agent's permit.

33-2405. Purchase statement.

33-2406. Surety bond.

33-2407. Powers and duties of director.

33-2408. Remedies — Civil penalties.

33-2409. Criminal penalties.

33-2410 — 33-2412. Violation a misdemeanor — Rules and regulations —  
Judicial review. [Repealed.]

**33-2401. Definitions.** — For the purposes of chapter 24, title 33, Idaho Code, the following words have the following meanings:

(1) “Accredited” means that a postsecondary educational institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board.

(2) “Agent” means any individual within the state of Idaho who solicits students for or on behalf of a proprietary school.

(3) “Agent’s certificate of identification” means a nontransferable written document issued to an agent by the proprietary school that the agent represents.

(4) “Board” means the state board of education.

(5) “Course” means instruction imparted in a series of lessons or class meetings to meet an educational objective.

(6) “Course or courses of study” means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise.

(7) “Degree” means any written or any academic title which contains, in any language, the word “associate,” “bachelor,” “baccalaureate,” “master” or “doctor,” or any abbreviation thereof, and which indicates or represents, or which is intended to indicate or represent, that the person named thereon, in the case of any writing, or the person it is awarded thereto, in the case of any academic title, is learned in or has satisfactorily completed a prescribed course of study in a particular field or that the person has demonstrated proficiency in any field of endeavor as a result of formal preparation or training.

(8) “Director” means the executive officer of the state board of education or his designee.

(9) “Person” means an individual, sole proprietorship, partnership, corporation or other association of individuals, however organized.

(10) “Postsecondary educational institution” means a person, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho, and which provides a course or courses of study that lead to a degree, or which provides, offers or sells degrees.

(11) “Proprietary school” means a person, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho and which conducts, provides, offers or sells a course or courses of study, but which does not provide, offer or sell degrees.

### **History.**

**I.C., § 33-2401**, as added by 1993, ch. 57, § 3, p. 154; am. 1995, ch. 107, § 1, p. 340; am. 1999, ch. 329, § 32, p. 852; am. 2006, ch. 240, § 2, p. 725; am. 2009, ch. 26, § 2, p. 73; am. 2011, ch. 159, § 1, p. 447.

## **STATUTORY NOTES**

### **Prior Laws.**

The following former sections were repealed by S.L. 1993, ch. 57, § 2, effective July 1, 1993:

33-2401. (1963, ch. 13, § 224, p. 27).

33-2402. (1963, ch. 13, § 225, p. 27; am. 1985, ch. 222, § 1, p. 534).

33-2403. (1963, ch. 13, § 226, p. 27; am. 1972, ch. 166, § 1, p. 414).

33-2404. (1963, ch. 13, § 227, p. 27; am. 1985, ch. 222, § 2, p. 534).

33-2405. (1963, ch. 13, § 228, p. 27).

33-2406. (1963, ch. 13, § 229, p. 27).

33-2407. (1963, ch. 13, § 230, p. 27; am. 1972, ch. 166, § 2, p. 414; am. 1985, ch. 222, § 3, p. 534).

33-2408. (1963, ch. 13, § 231, p. 27).

33-2409. (1963, ch. 13, § 232, p. 27).

## **Amendments.**

The 2006 amendment, by ch. 240, in subsection (1), substituted “postsecondary educational institution” for “school,” and deleted “or the United States department of education” from the end; in subsection (2), inserted “within the state of Idaho,” deleted “courses in Idaho” following “students for,” and added “or on behalf of a proprietary school”; added subsection (5), and made related redesignations; in subsection (6), inserted “or courses,” and added “either for academic credit or otherwise”; near the end of subsection (7), inserted “public or private postsecondary educational” and “or other entity”; deleted the undesignated paragraph of subsection (7), which pertained to the recognizing of the authority to confer degrees; deleted former subsections (7), (8), (10), and (11), which were the definitions for “Person,” “Principal,” “Registrant,” and “Student,” respectively; added present subsection (8); and rewrote subsection (9), which formerly read: “‘Proprietary school’ referred to as ‘school’ means any postsecondary or vocational or professional-technical educational school operated for a profit, or on a nonprofit basis, which maintains a place of business within the state of Idaho or solicits business within the state of Idaho offering degrees, career or job training programs and which is not specifically exempted by the provisions of this chapter.”

The 2009 amendment, by ch. 26, rewrote subsections (3) and (7), changing the defined term in subsection (3) from “agent’s permit”; and, in subsection (8), substituted “provides a course or courses of study that lead to a degree” for “provides courses or programs that lead to a degree.”

The 2011 amendment, by ch. 159, added subsections (8) and (9) and redesignated the subsequent subsections accordingly.

**33-2402. Registration of postsecondary educational institutions. —**

(1) Unless exempted as provided herein, each postsecondary educational institution which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually with and hold a valid certificate of registration issued by the director. A public postsecondary educational institution or agency supported primarily by taxation from either the state of Idaho or a local source in Idaho shall not be required to register under this section. The director may exempt a nonprofit postsecondary educational institution from the registration requirement in accordance with standards and criteria established in rule by the board. The director may permit a postsecondary educational institution required to register under this section to instead register as a proprietary school under section 33-2403, Idaho Code, in accordance with standards and criteria established in rule by the board.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each degree, course or courses of study, for academic credit or otherwise, that a postsecondary educational institution intends to conduct, provide, offer or sell. Such rule shall also prescribe the standards and criteria to be utilized by the director for recognition of accreditation organizations.

(3) The director may deny the registration of a postsecondary educational institution that does not meet accreditation requirements or other standards and criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The director shall assess an annual registration fee on each postsecondary educational institution required to be registered under this section as established in rule by the board. Such annual registration fee shall not exceed five thousand dollars (\$5,000) and shall be collected by the director and shall be dedicated for use by the director in connection with his responsibilities under this chapter.

**History.**

**I.C., § 33-2402**, as added by 2006, ch. 240, § 4, p. 725; am. 2009, ch. 26, § 3, p. 73; am. 2011, ch. 159, § 2, p. 447.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-2402, which comprised **I.C., § 33-2402**, as added by 1993, ch. 57, § 3, p. 154; am. 1997, ch. 187, § 1, p. 511 was repealed by S.L. 2006, ch. 240, § 3.

Another former § 33-2402 was repealed. See Prior Laws, § 33-2401.

### **Amendments.**

The 2009 amendment, by ch. 26, in subsection (2), substituted “courses of study” for “program” in the first sentence; and, in subsection (4), rewrote the first sentence, which formerly read: “The board shall assess an annual registration fee on each postsecondary educational institution required to be registered under this section based on the respective degrees, courses or programs that each such postsecondary educational institution intends to conduct, provide, offer or sell, not to exceed one hundred dollars (\$100) for each degree, course or program” and inserted “not exceed five thousand dollars (\$5,000) and shall” in the last sentence.

The 2011 amendment, by ch. 159, substituted “director” for “board” throughout the section.

**33-2403. Registration of proprietary schools.** — (1) Unless exempted as provided in subsection (4) of this section, each proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually with and hold a valid certificate of registration issued by the director.

(2) The board shall prescribe by rule the procedure for registration, which shall include, but is not limited to, a description of each course or courses of study, for academic credit or otherwise, that a proprietary school intends to conduct, provide, offer or sell.

(3) The director may deny the registration of a proprietary school that does not meet the standards or criteria established in rule by the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

(4) The following individuals or entities are specifically exempt from the registration provisions required by this section:

(a) An individual or entity that offers instruction or training solely avocational or recreational in nature, as determined by the board.

(b) An individual or entity that offers courses recognized by the board which comply in whole or in part with the compulsory education law.

(c) An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student.

(d) An individual or entity that conducts or engages in activities that would otherwise require registration under chapter 24, title 33, Idaho Code, if another state agency, commission or board regulates such activities pursuant to title 54, Idaho Code.

(e) An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation.



(f) An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days and offered no more than four (4) times per year.

(g) A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted.

(h) An individual or entity that offers postsecondary credit through a consortium of public and private colleges and universities under the auspices of the western governors.

(i) An individual that offers flight instruction and that accepts payment for services for such training on a per-flight basis after the training occurs, or that accepts advance payment or a deposit for such training in a de minimus amount, as established by the board in rule.

(j) An individual or entity that offers a program, school or course related to the instruction or practice of yoga.

(5) The director shall assess an annual registration fee on each proprietary school required to be registered under this section as established in rule by the board. Such annual registration fee shall not exceed five thousand dollars (\$5,000) and shall be collected by the director, and shall be dedicated for use by the director in connection with his responsibilities under this chapter.

### **History.**

**I.C., § 33-2403**, as added by 2006, ch. 240, § 6, p. 725; am. 2009, ch. 26, § 4, p. 73; am. 2011, ch. 159, § 3, p. 447; am. 2017, ch. 127, § 1, p. 297.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-2403, which comprised **I.C., § 33-2403**, as added by 1993, ch. 57, § 3, p. 154 was repealed by S.L. 2006, ch. 240, § 5.

Another former § 33-2403 was repealed. See Prior Laws, § 33-2401.

### **Amendments.**

The 2009 amendment, by ch. 26, in subsection (2), substituted “courses of study” for “program”; deleted former subsection (4)(e), which read:

“Aviation school or instructors approved by and under the supervision of the federal aviation administration” and made related redesignations; and, in subsection (5), added “as established by the board” in the first sentence, deleted the second sentence, which read: “Such annual registration fee shall be composed of a fixed portion in an amount not to exceed one hundred dollars (\$100) for each proprietary school, and a variable portion based on the respective course or courses of study that each proprietary school intends to conduct, provide, offer or sell, not to exceed one hundred dollars (\$100) for each course or courses of study,” and inserted “not exceed five thousand dollars (\$5,000) and shall” and “or its designee” in the last sentence.

The 2011 amendment, by ch. 159, at the end of subsection (1), substituted “director” for “board or its designee”; throughout subsections (3) and (5), substituted “director” for “board”; rewrote paragraph (4)(d), which formerly read: “An individual or entity which is otherwise regulated, licensed or registered with another state agency pursuant to title 54, Idaho Code”; in paragraph (4)(f), added “and offered no more than four (4) times per year”; added paragraph (4)(i); and, in subsection (5), substituted “collected by the director” for “collected by the board or its designee.”

The 2017 amendment, by ch. 127, added paragraph (4)(j).

### **Effective Dates.**

Section 2 of S.L. 2017, ch. 127 declared an emergency. Approved March 24, 2017.

**33-2404. Agent's permit.** — (1) No individual may act as an agent of a proprietary school required to be registered under the provisions of this chapter unless that individual holds a valid agent's certificate of identification issued by the proprietary school that the agent represents.

(2) Each agent's certificate of identification shall be reissued annually by the proprietary school that the agent represents on the first day of July. If courses are solicited or sold by more than one (1) agent, a separate certificate of identification is required for each agent.

(3) The agent's certificate of identification shall consist of a pocket card and shall bear:

- (a) The name and address of the agent;
- (b) The name and address of the proprietary school that the agent represents;
- (c) A statement that the bearer is an authorized agent of the proprietary school and may solicit students for the proprietary school.

(4) The agent shall surrender the agent's certificate of identification to the proprietary school upon termination of employment or agency relationship.

(5) An agent representing more than one (1) proprietary school shall obtain a separate agent's certificate of identification for each proprietary school represented.

(6) For every agent who will have unsupervised contact with minors, prior to issuing the agent a certificate of identification the proprietary school shall complete a criminal history check on the agent for particular criminal offenses, and in accordance with other guidelines, established in rule by the board. No agent shall be issued an agent's certificate of identification if he or she is found to have been convicted of any of the offenses identified in board rule, or if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter.

(7) An agent's certificate of identification shall be valid for the state's fiscal year in which it is issued, unless sooner revoked or suspended.

(8) The agent shall carry the agent's certificate of identification with him or her for identification purposes when engaged in the solicitation of students away from the premises of the proprietary school and shall produce the agent's certificate of identification for inspection upon request.

(9) The issuance of an agent's certificate of identification pursuant to this section shall not be interpreted as, and it shall be unlawful for any individual holding any agent's certificate of identification to expressly or impliedly represent by any means whatsoever, that the board has made any evaluation, recognition, accreditation or endorsement of any proprietary school or of any course of study being offered by the agent of any such proprietary school. Any oral or written statement, advertisement or solicitation by any proprietary school or agent which refers to the board shall state:

“(Name of school) is registered with the State Board of Education in accordance with [Section 33-2403, Idaho Code](#).”

(10) It shall be unlawful for any agent holding an agent's certificate of identification under the provisions of this section to expressly or impliedly represent, by any means whatsoever, that the issuance of the agent's certificate of identification constitutes an assurance by the board that any course of study being offered by the agent or proprietary school will provide and require of the student a course of education or training necessary to reach a professional, educational, or vocational objective, or will result in employment or personal earning for the student, or that the board has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered by the agent or proprietary school.

(11) No agent shall make any statements or engage in any practices that are false, deceptive or misleading.

(12) The proprietary school shall maintain records for five (5) years of each application for an agent's certificate of identification, and each issuance, denial, termination, suspension and revocation of an agent's certificate of identification.

(13) The proprietary school shall provide as part of the annual registration process the names and results of the criminal history check for

each agent to whom it has issued a certificate of identification. The criminal history check will be valid for five (5) years.

(14) A student may bring an action pursuant to the Idaho rules of civil procedure for an agent's violation of the provisions of this chapter or any rule promulgated pursuant to this chapter, or any fraud or misrepresentation. The court shall determine which party is the "prevailing party" and the prevailing party shall be entitled to the recovery of damages, reasonable attorney's fees and costs both at trial and on appeal.

### **History.**

**I.C., § 33-2405**, as added by 1993, ch. 57, § 3, p. 154; am. and redesign. 2006, ch. 240, § 8, p. 725; am. 2009, ch. 26, § 5, p. 73; am. 2011, ch. 159, § 4, p. 447.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-2404, which comprised **I.C., § 33-2404**, as added by 1993, ch. 57, § 3, p. 154 was repealed by S.L. 2006, ch. 240, § 7.

Another former § 33-2404 was repealed. See Prior Laws, § 33-2401.

### **Amendments.**

The 2006 amendment, by ch. 240, renumbered the section from § 33-2405; throughout the section, inserted "agent" preceding "permit," or similar language and "proprietary" preceding "school"; in the introductory paragraph, inserted "of a proprietary school required to be registered under the provisions of this chapter," and corrected the section reference; in subsection (2), substituted "annual fee for each permit not to exceed fifty dollars (\$50.00)" for "annual fee of twenty five dollars (\$25.00)," and added the last sentence; throughout the second undesignated paragraph of subsection (2) and near the end of the eighth undesignated paragraph, substituted "proprietary school" for "principal"; in the third undesignated paragraph of subsection (2), substituted "proprietary school" for "institution"; in the ninth undesignated paragraph substituted "agent" for "individual"; and in the final paragraph, deleted "principal or" preceding "agent."

The 2009 amendment, by ch. 26, rewrote the section to the extent that a detailed comparison is impracticable.

The 2011 amendment, by ch. 159, rewrote subsection (11), which formerly read: “No agent shall make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are illegal, false, deceptive, misleading or unfair”; deleted “The board or” from the beginning of subsection (14); and deleted subsection (15), which formerly read: “Any agent who violates the provisions of this section is also guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five thousand dollars (\$5,000), or both.”

**Compiler’s Notes.**

This section was formerly compiled as § 33-2405.

The words enclosed in parentheses so appeared in the law as enacted.

**33-2405. Purchase statement.** — At the time of depositing any moneys to purchase the product of any proprietary school, the proprietary school shall require the student to execute the following statement on an appropriate form which shall be maintained on record by the proprietary school in the individual student's file:

“I understand that (Name of proprietary school) is registered with the State Board of Education in accordance with **Section 33-2403, Idaho Code**. I also understand that the State Board of Education has not accredited or endorsed any course of study being offered by (Name of proprietary school), and that these courses may not be accepted for transfer into any Idaho public postsecondary institution.”

### **History.**

**I.C., § 33-2406**, as added by 1993, ch. 57, § 3, p. 154; am. and redesign. 2006, ch. 240, § 9, p. 725; am. 2009, ch. 26, § 6, p. 73.

## **STATUTORY NOTES**

### **Prior Laws.**

A former § 33-2405 was repealed. See Prior Laws, § 33-2401.

### **Amendments.**

The 2006 amendment, by ch. 240, renumbered the section from § 33-2406; inserted “proprietary” preceding the second occurrence of “school,” and in the statement, twice substituted “proprietary school” for “Institution,” and added the language beginning “and that these courses.”

The 2009 amendment, by ch. 26, substituted “may not be accepted” for “will not be accepted” in the last sentence of the statement.

### **Compiler's Notes.**

This section was formerly compiled as § 33-2406.

Former § 33-2405 has been amended and redesignated as § 33-2404, pursuant to S.L. 2006, ch. 240, § 8.

The words enclosed in parentheses so appeared in the law as enacted.



**33-2406. Surety bond.** — Unless exempted as provided in this section, as a condition of registration, a proprietary school shall obtain a surety bond issued by an insurer duly authorized to do business in this state or other financial instrument in a format approved by the director, in favor of the state of Idaho for the indemnification of any student for any loss suffered as a result of a failure by such proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract for tuition or other instructional fees entered into between the proprietary school and a student, or as a result of any violation of the provisions of this chapter or the rules promulgated pursuant to this chapter. The term of the bond shall extend over the period of registration, and shall be in such amount as is established in rule by the board.

The director may submit a demand upon the surety on the bond on behalf of a student or students when it is reasonably believed that a loss has occurred due to a failure by such proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract for tuition or other instructional fees entered into between the proprietary school and a student, or as a result of any violation of the provisions of this chapter or the rules promulgated pursuant to this chapter.

Neither the principal nor surety on the bond or other financial instrument may terminate the coverage of the bond, except upon giving one hundred twenty (120) days' prior written notice to the director.

Proprietary schools that are accredited by an accreditation organization recognized by the board shall not be required to obtain a surety bond or other financial instrument.

### **History.**

I.C., § 33-2407, as added by 1993, ch. 57, § 3, p. 154; am. and redesign. 2006, ch. 240, § 10, p. 725; am. 2009, ch. 26, § 7, p. 73; am. 2010, ch. 79, § 9, p. 133; am. 2011, ch. 159, § 5, p. 447; am. 2013, ch. 31, § 1, p. 69; am. 2014, ch. 35, § 1, p. 60.

## **STATUTORY NOTES**

**Prior Laws.**

A former § 33-2406 was repealed. See Prior Laws, § 33-2401.

**Amendments.**

The 2006 amendment, by ch. 240, renumbered the section from § 33-2407; throughout the section, inserted “proprietary”; and in the introductory paragraph, substituted “student” for “person.”

The 2009 amendment, by ch. 26, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 79, substituted the second occurrence of “proprietary school” for “propriety school” in the first paragraph.

The 2011 amendment, by ch. 159, added the last sentence in the first paragraph; substituted “director” for “board or its designee” near the beginning of the second paragraph; and substituted “director” for “board” at the end of the last paragraph.

The 2013 amendment, by ch. 31, in the first paragraph, inserted “or other financial instrument in a format approved by the director” near the beginning and inserted “the provisions of” near the end and deleted the former last sentence, which read: “The board may permit the director to accept from a newly registered proprietary school, for a period not to exceed five (5) years, a bond in a lesser amount that is supplemented by other financial instruments deemed acceptable by the director”; and inserted “or other financial instrument” near the beginning of the last paragraph.

The 2014 amendment, by ch. 35, in the first paragraph, inserted “Unless exempted as provided in this section” at the beginning and added the last paragraph in the section.

**Compiler’s Notes.**

Former § 33-2406 has been amended and redesignated as § 33-2405, pursuant to S.L. 2006, ch. 240, § 9.

This section was formerly compiled as § 33-2407.

**33-2407. Powers and duties of director.** — (1) In addition to the other duties imposed upon the director by law, the director, either personally or by designee, shall be permitted to:

(a) Administer and enforce the provisions and requirements of this chapter or rules promulgated under authority of this chapter.

(b) Conduct investigations and issue subpoenas as necessary to determine whether any person or any agent has violated or is violating any provision of this chapter or rules promulgated under authority of this chapter.

(c) Upon reasonable notice, conduct examinations of the books and records of postsecondary educational institutions and proprietary schools, and investigations of any person or any agent, wherever located, and as may be necessary and proper for the enforcement of the provisions of this chapter and the rules promulgated under the authority of this chapter.

For these purposes, the director or his designated representative shall have free access to the offices and places of business or operations, books, accounts, papers, documents, other information, records, files, safes and vaults of all such persons or agents.

(2) The director may issue orders and the board may promulgate rules that, in the opinion of the director and board respectively, are necessary to execute, enforce and effectuate the purposes of this chapter.

### **History.**

I.C., § 33-2407, as added by 2011, ch. 159, § 6, p. 447.

## **STATUTORY NOTES**

### **Prior Laws.**

Another former § 33-2407, Student tuition recovery account — Conditions for recovery, which comprised I.C., § 33-2408, as added by 1993, ch. 57, § 3, p. 154; am. and redesign. 2006, ch. 240, § 11, p. 725, was repealed by S.L. 2009, ch. 26, § 8.

A former § 33-2407 was repealed. See Prior Laws, § 33-2401.

**Compiler's Notes.**

Former § 33-2407 has been amended and redesignated as § 33-2406, pursuant to S.L. 2006, ch. 240, § 10.

**33-2408. Remedies — Civil penalties.** — (1) Whenever there is sufficient evidence that causes the director to conclude that any person or any agent has engaged in or is about to engage in any act or practice constituting a violation of any provisions of this chapter or any rule or order thereunder, the director may:

(a) Issue a cease and desist order ordering such person or agent to cease and desist violating or continuing to violate any provision of this chapter or any rule or order issued in accordance with this chapter; or

(b) Apply to the district court for an order enjoining such person or agent from violating or continuing to violate any provision of this chapter or any rule or order and for injunctive or such other relief as the nature of the case may require.

(2) Within thirty (30) days after an order is issued under subsection (1)(a) of this section, the person or agent to whom the order is directed may file with the director a request for a hearing on the order. The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to such hearing and to judicial review of such order.

(3) Upon showing in any court of competent jurisdiction that a person or agent has violated the provisions of this chapter or rule adopted pursuant to the provisions of this chapter, in addition to any other remedies, such court may order the person or agent to pay civil penalties in an amount established by the court for each violation. Such court may also enter an order entitling the director to recover costs, which in the discretion of the court may include an amount representing reasonable attorney's fees and reimbursement for investigative efforts.

### **History.**

I.C., § 33-2408, as added by 2011, ch. 159, § 7, p. 447.

## **STATUTORY NOTES**

### **Prior Laws.**

Another former § 33-2408, Assessment for student tuition recovery account, which comprised **I.C., § 33-2409**, as added by 1993, ch. 57, § 3, p. 154; am. and redesign. 2006, ch. 240, § 12, p. 725, was repealed by S.L. 2009, ch. 26, § 8.

A former § 33-2408 was repealed. See Prior Laws, § 33-2401.

**Compiler's Notes.**

Former § 33-2408 was amended and redesignated as § 33-2407, pursuant to S.L. 2006, ch. 240, § 11, and then repealed by S.L. 2009, ch. 26, § 8.

**33-2409. Criminal penalties.** — (1) Any person who intentionally violates the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five thousand dollars (\$5,000), or both.

(2) Any person who intentionally fails to register according to the provisions of this chapter is guilty of a felony punishable by imprisonment in the county jail not exceeding twelve (12) months, or by a fine not exceeding ten thousand dollars (\$10,000), or both.

**History.**

**I.C., § 33-2409**, as added by 2006, ch. 240, § 13, p. 725; am. 2011, ch. 159, § 8, p. 447.

**STATUTORY NOTES**

**Prior Laws.**

A former § 33-2409 was repealed. See Prior Laws, § 33-2401.

**Amendments.**

The 2011 amendment, by ch. 159, rewrote the section heading, which formerly read: “Enforcement”; and rewrote the section, which read: “Any violation of the provisions of this chapter shall be referred to the attorney general by the board for appropriate action including, but not limited to, injunctive relief.”

**Compiler’s Notes.**

Former § 33-2409 has been amended and redesignated as § 33-2408, pursuant to S.L. 2006, ch. 240, § 12, and then repealed by S.L. 2009, ch. 26, § 8..

**33-2410 — 33-2412. Violation a misdemeanor — Rules and regulations  
— Judicial review. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 1993, ch. 57, § 2, effective July 1, 1993: 33-2410. (1963, ch. 13, § 233, p. 27).

33-2411. (1963, ch. 13, § 234, p. 27).

33-2412. (1963, ch. 13, § 235, p. 27).



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## **CHAPTER 25**

### **COMMISSION FOR LIBRARIES**

#### **Section.**

33-2501. Commission for libraries established.

33-2502. Board of library commissioners — Appointment, removal and terms — Officers — Meetings — Compensation.

33-2503. Board of library commissioners — Powers and duties.

33-2504. State librarian appointed by board of library commissioners — Qualifications — Powers.

33-2505. Digital repository for state publications.

33-2505A. Definitions.

33-2505B. Submission by state agencies.

33-2505C. Exemptions.

33-2506. Library services improvement fund — Established.

33-2507. State treasurer trustee of library funds when required.

33-2508. Digital and online library resources for K-12 students.

**33-2501. Commission for libraries established.** — The state of Idaho recognizes that libraries are uniquely suited to making the benefits of information and information technologies available to the citizens of the state of Idaho. Therefore, the Idaho commission for libraries is hereby established for the purpose of assisting libraries to build the capacity to better serve their clientele.

### **History.**

**I.C., § 33-2501**, as added by 1998, ch. 57, § 2, p. 211; am. 2006, ch. 235, § 2, p. 701.

## **STATUTORY NOTES**

### **Prior Laws.**

The following sections of former chapter 25, title 33 were repealed by S.L. 1998, ch. 57, § 1, effective July 1, 1998: § 33-2501, comprised as 1903, ch. 283, § 1; reen. R.C., § 672; reen 1911, ch. 159, § 174, p. 550; reen C.L. 38:288; C.S., § 1032; I.C.A., § 32-2001; am. 1953, ch. 38, § 1, p. 57; am. 1974, ch. 10, § 15, p. 49; am. 1980, ch. 247, § 27, p. 582; am. 1990, ch. 44, § 1, p. 70.

§ 33-2502, comprised as 1903, p. 283, § 2, reen. R.C., § 673; am. 1911, ch. 159, § 175, p. 550; reen. C.L. 38:289; C.S., § 1033; I.C.A., § 32-2002; am. 1959, ch. 19, § 1, p. 40.

§ 33-2503, comprised as 1903, p. 283, § 3; reen. R.C., § 674; reen. 1911, ch. 159, § 176, p. 551; C.S., § 1034; I.C.A., § 32-2003; am. 1959, ch. 19, § 2, p. 40.

§ 33-2504, comprised as **I.C., § 33-2504**, as added by 1965, ch. 252, § 1, p. 629; am. 1990, ch. 277, § 3, p. 780; am. 1991, ch. 126, § 1, p. 279.

§ 33-2505, comprised as **I.C., § 33-2505**, as added by 1965, ch. 252, § 1, p. 629.

§ 33-2506, comprised as **I.C., § 33-2506**, as added by 1965, ch. 252, § 1, p. 629.

§ 33-2507, comprised as **I.C., § 33-2507**, as added by 1965, ch. 252, § 1, p. 629.

§ 33-2508, comprised as **I.C., § 33-2508**, as added by 1965, ch. 252, § 1, p. 629.

§ 33-2509, comprised as **I.C., § 33-2509**, as added by 1965, ch. 252, § 1, p. 629.

§ 33-2510, comprised as 1972, ch. 165, § 1, p. 413.

§§ 33-2511 and 33-2512, which comprised **I.C., §§ 33-2511 and 33-2512**, as added by 1990, ch. 277, §§ 2 and 4, p. 780 were repealed by S.L. 1991, ch. 126, § 1 and 1998, ch. 57, § 1.

§ 33-2513, comprised as **I.C., § 33-2513**, as added by 1991, ch. 132, § 1, p. 291; am. 1994, ch. 180, § 47, p. 420.

### **Amendments.**

The 2006 amendment, by ch. 235, twice substituted “commission for libraries” for “state library” and added “for the purpose of assisting libraries to build the capacity to better serve their clientele.”

**33-2502. Board of library commissioners — Appointment, removal and terms — Officers — Meetings — Compensation.** — The board of library commissioners shall, for the purposes of section 20, article IV of the constitution of the state of Idaho, be maintained within the department of self-governing agencies and shall consist of five (5) commissioners appointed by the governor. The board shall nominate to the governor qualified candidates to fill any board vacancy. The governor shall consider geographic representation when selecting board commissioners by appointing one (1) board commissioner from the northern part of the state, one (1) board commissioner from the eastern part of the state, one (1) board commissioner from the southwestern part of the state and one (1) board commissioner from each of the two (2) congressional districts. Appointments are for five (5) year terms and commissioners may serve more than one (1) term. At the end of a term, the commissioner shall continue to serve until a successor is appointed and qualifies. A vacancy on the board of library commissioners shall be filled in the same manner as regular appointments and shall be for the unexpired portion of the term. The governor may remove board commissioners for cause including, but not limited to, frequent absences from board meetings. The board of library commissioners shall annually elect a chairman, vice chairman and other officers as it deems reasonably necessary. The board of library commissioners shall meet at least twice each year. Commissioners shall be compensated as provided by section 59-509(n), Idaho Code.

**History.**

I.C., § 33-2502, as added by 1998, ch. 57, § 2, p. 211; am. 2006, ch. 235, § 3, p. 701; am. 2009, ch. 178, § 2, p. 575.

**STATUTORY NOTES**

**Cross References.**

Department of self-governing agencies, § 67-2601 et seq.

**Prior Laws.**

Former § 33-2502 was repealed. See Prior Laws, § 33-2501.

## **Amendments.**

The 2006 amendment, by ch. 235, rewrote the section, which formerly read: “State library board — Membership — Officers — Meetings — Compensation. The state library shall be governed by the state library board. The state library board shall be maintained within the office of the state board of education and shall consist of the state superintendent of public instruction or the superintendent’s designee, as ex officio member, and five (5) members appointed by the state board of education. On the first Monday of July, 1998, the state board of education shall appoint one (1) member for a term of three (3) years, one (1) member for a term of four (4) years, and one (1) member for a term of five (5) years. Thereafter, the state board of education shall annually, on the first Monday of July, appoint one (1) member to the state library board to serve for a term of five (5) years. The state library board shall annually elect a chairman, vice chairman, secretary and other officers as it deems reasonably necessary. The state library board shall meet at least twice each year. Members shall be compensated as provided by [section 59-509\(n\), Idaho Code.](#)”

The 2009 amendment, by ch. 178, substituted “appointment, removal and terms” for “membership” in the section heading and rewrote the section to the extent that a detailed comparison is impracticable.

**33-2503. Board of library commissioners — Powers and duties. —**

The board of library commissioners is designated as the policymaking body for the Idaho commission for libraries. The board of library commissioners shall have the following powers and duties:

- (1) To foster and promote library service in the state of Idaho.
- (2) To promulgate all rules and make policies as necessary for the proper conduct of its business.
- (3) To receive donations of money, materials and other real and personal property, for the benefit of the Idaho commission for libraries. Title to donations in any form shall vest in the state of Idaho. Donations shall be held and controlled by the board of library commissioners.
- (4) To promote and facilitate the establishment, use, and cooperation of libraries throughout the state so all Idahoans have access to the resources of those libraries.
- (5) To support or deliver statewide library programs and services.
- (6) To accept, receive, administer and expend, in accordance with the terms thereof, any moneys, materials or other aid granted, appropriated, or made available to Idaho by the United States, or any of its agencies, or by any other public or private source, for library purposes. The board of library commissioners is authorized to file any accounts required with reference to receiving and administering all such moneys, materials and other aid.
- (7) To assist in the establishment of financing of a statewide program of cooperative library services, which may be in cooperation with any taxing unit, or public or private agency.
- (8) To contract with other libraries or agencies, within or without the state of Idaho, to render library services to people of the state of Idaho. The board of library commissioners shall have authority to reasonably compensate other library units or agencies for the cost of the services provided by the other library unit or agency under any such contract. Such contracts and compensation shall be exempt from the provisions of chapter 92, title 67, Idaho Code.

**History.**

I.C., § 33-2503, as added by 1998, ch. 57, § 2, p. 211; am. 2006, ch. 235, § 4, p. 701; am. 2016, ch. 289, § 7, p. 793.

**STATUTORY NOTES****Prior Laws.**

Former § 33-2503 was repealed. See Prior Laws, § 33-2501.

**Amendments.**

The 2006 amendment, by ch. 235, throughout the section, substituted “board of library commissioners” for “state library board” and “commission for libraries” for “state library”; deleted former subsections (3), (6) and (11), pertaining, respectively, to the employment of a qualified librarian as the chief executive officer, the providing of services as the Idaho state government information center, and the authority to promulgate rules; and redesignated remaining subsections accordingly.

The 2016 amendment, by ch. 289, substituted “chapter 92, title 67” for “chapter 57, title 67” near the end of subsection (8).



**33-2504. State librarian appointed by board of library commissioners — Qualifications — Powers.** — The board of library commissioners shall employ a qualified state librarian to serve as its chief executive officer. The state librarian shall be a graduate of an accredited library school.

The state librarian shall, subject to the provisions of chapter 53, title 67, Idaho Code, employ and fix the compensation of all other employees of the commission who shall be directly responsible to the state librarian.

**History.**

I.C., § 33-2504, as added by 2006, ch. 235, § 6, p. 701.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2504, which comprised I.C., § 33-2504, as added by 1998, ch. 57, § 2, p. 211, was repealed by S.L. 2006, ch. 235, § 5, effective July 1, 2006.

Another former § 33-2504 was repealed. See Prior Laws, § 33-2501.

**33-2505. Digital repository for state publications.** — Recognizing that an informed citizenry is a cornerstone for an effective democracy, and in order to provide free and continuous access to state publications, it shall be the duty of the state librarian to establish and maintain a publicly accessible digital repository of state publications prepared by state agencies. The digital repository is intended to collect state publications and make them readily available to all Idaho citizens.

**History.**

I.C., § 33-2505, as added by 1998, ch. 57, § 2, p. 211; am. 2006, ch. 235, § 7, p. 701; am. 2008, ch. 81, § 1, p. 209.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2505 was repealed. See Prior Laws, § 33-2501.

**Amendments.**

The 2006 amendment, by ch. 235, substituted “commission for libraries” for “state library.”

The 2008 amendment, by ch. 81, rewrote the section heading, which formerly read, “State librarian — Depository for public documents — Distribution” and rewrote the section to the extent that a detailed comparison is impracticable. See §§ 33-2505A to 33-2505C for provisions similar to this section prior to 2008 amendment.

**33-2505A. Definitions.** — As used in this chapter:

(1) “Digital repository” means electronic publications stored and accessible to the public online in a secure digital environment with redundant backup.

(2) “Format” includes any media used for state publications including, but not limited to, electronic, print, audio, visual and microform.

(3) “State agency” includes every constitutional and statutory office, officer, department, division, bureau, board, commission and agency of the state and, where applicable, all subdivisions of each.

(4) “State publication” means any information, regardless of format, published by a state agency and intended for distribution to the public. State publication does not include correspondence, internal confidential publications, office memoranda, university press publications, items detailed by chapter 1, title 74, Idaho Code, or other information excluded or exempted by rule promulgated by the board of library commissioners.

**History.**

I.C., § 33-2505A, as added by 2008, ch. 81, § 2, p. 210; am. 2015, ch. 141, § 66, p. 379.

**STATUTORY NOTES**

**Amendments.**

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “sections 9-340A through 9-340H” in subsection (4).

**33-2505B. Submission by state agencies.** — (1) The head of every state agency or their designee shall promptly submit to the commission for libraries copies of published information that are state publications.

(a) For state publications available only in print format, each state agency shall submit two (2) copies of each printed publication to the commission for libraries.

(b) For state publications available only in electronic format, each state agency shall submit one (1) digital copy of each electronic publication to the commission for libraries.

(c) For state publications available in both print and electronic format, each state agency shall submit two (2) print copies and one (1) digital copy of the publication to the commission for libraries.

(d) Of the two (2) print copies of state publications, one (1) copy shall be sent to the Idaho state historical society and one (1) copy shall be sent to the university of Idaho library for archival purposes.

(2) The commission for libraries shall promulgate such rules as are necessary and appropriate to accomplish the purpose of a digital repository for state publications.

**History.**

I.C., § 33-2505B, as added by 2008, ch. 81, § 2, p. 210.

**STATUTORY NOTES**

**Cross References.**

Idaho state historical society, § 67-4123 et seq.

**33-2505C. Exemptions.** — In the interest of economy and efficiency, the board of library commissioners may exempt a given state publication or class of publications from the requirements of sections 33-2505, 33-2505A and 33-2505B, Idaho Code, in full or in part, and shall promulgate rules in compliance with chapter 52, title 67, Idaho Code, and make policies to implement this section.

**History.**

I.C., § 33-2505C, as added by 2008, ch. 81, § 2, p. 211.

**33-2506. Library services improvement fund — Established. —** (1) Policy. The state of Idaho recognizes its responsibility to provide library services to people in all areas of the state. The state acknowledges that the ability of each Idahoan to access information has a critical impact on the state's economic development, educational success, provision for an informed electorate, and overall quality of life. Realizing that libraries of all types and in all parts of the state must be able to interact and cooperate in order to respond to these informational needs, the state of Idaho hereby creates and establishes in the state treasury the library services improvement fund.

(2) Purpose. The purpose of the library services improvement fund is to further the development of library services for all the people of Idaho. Moneys in the library services improvement fund are appropriated to and may be expended by the board of library commissioners at any time for the purposes provided in this section.

(3) Appropriations and revenues. The library services improvement fund shall have paid into it such appropriations as may be provided or other moneys and donations described in [section 33-2503, Idaho Code](#).

(4) Payments.

(a) All payments from the library services improvement fund shall be paid out in warrants drawn by the state controller upon presentation of proper vouchers from the commission for libraries. Pending payments out of the library services improvement fund, the moneys in the fund shall be invested by the state treasurer in the same manner as provided under [section 67-1210, Idaho Code](#), with respect to idle moneys in the state treasury. Interest earned on the investments shall be returned to the library services improvement fund.

(b) No library entity is automatically entitled to receive any payments from the library services improvement fund. The board of library commissioners shall establish the criteria upon which actual need is to be determined in accordance with the purposes set forth in this section.

(c) Payments from the library services improvement fund may be used only for the purposes approved by the board of library commissioners. Funding decisions shall be solely within the discretion of the board of library commissioners.

**History.**

I.C., § 33-2506, as added by 1998, ch. 57, § 2, p. 211; am. 1999, ch. 33, § 1, p. 69; am. 2006, ch. 235, § 8, p. 701.

**STATUTORY NOTES**

**Cross References.**

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

**Prior Laws.**

Former § 33-2506 was repealed. See Prior Laws, § 33-2501.

**Amendments.**

The 2006 amendment, by ch. 235, throughout the section, substituted “board of library commissioners” for “state library board”; and in subsection (4)(a), substituted “commission for libraries” for “state library.”

**33-2507. State treasurer trustee of library funds when required. —**

When the conditions of the grant or appropriation so require, the state treasurer shall serve as trustee of funds appropriated to the state from any appropriation made by the federal government, the state, or any other agency for providing and equalizing library service in Idaho.

**History.**

1963, ch. 188, § 16, p. 568; am. and redesign. 1989, ch. 132, § 18, p. 286; am. and redesign. 2002, ch. 312, § 9, p. 886.

**STATUTORY NOTES**

**Cross References.**

State treasurer, § 67-1201 et seq.

**Compiler's Notes.**

This section was formerly compiled as § 33-2723.



**33-2508. Digital and online library resources for K-12 students.** — If the commission for libraries provides digital or online library resources for the use of students in kindergarten through grade 12, the commission shall comply with all provisions of section 33-137, Idaho Code.

**History.**

I.C., § 33-2508, as added by 2020, ch. 274, § 2, p. 808.

**STATUTORY NOTES**

**Cross References.**

Commission for libraries, § 33-2501.



## **CHAPTER 26**

### **PUBLIC LIBRARIES**

#### **Section.**

33-2601. Policy.

33-2602. Definitions.

33-2603. Cities may establish tax supported libraries.

33-2604. Board of trustees — Appointment — Term of office — Compensation.

33-2605. Board of trustees — Vacancies — Removal.

33-2606. Board of trustees — Meetings.

33-2607. Powers and duties of trustees.

33-2608. Library director — Duties — Other employees.

33-2609. Annual appropriations — Control of expenditures.

33-2610. Donations.

33-2611. Reports of trustees.

33-2612. Regional library systems — Purpose — Boundaries.

33-2613. Definitions.

33-2614. Petition for establishment.

33-2615. System board of directors.

33-2616. Powers and duties of the system board.

33-2617. Finance of regional systems — Budgets — Participating and nonparticipating units.

33-2618. Addition to or withdrawal from a regional system.

33-2619. Administration of act by board of library commissioners.

33-2620. Failure to return borrowed material.

33-2621 — 33-2638. [Repealed.]

**33-2601. Policy.** — It is hereby declared to be the policy of the state of Idaho, as a part of the provisions for public education, to promote the establishment and development of free library service for all the people in Idaho. It is the purpose of this act to assure an informed electorate by enabling the provision of free local library service, in the present and in the future, to children in their formative years and to adults for their continuing education. To carry out the purpose of this act, an independent, nonpartisan board shall govern the library.

Every library established in this chapter shall be forever free for the use of the residents of the city, always subject to such reasonable rules and regulations as the library board may find necessary to adopt.

**History.**

I.C., § 33-2601, as added by 1993, ch. 186, § 2, p. 467.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act”, as used in this section, refers to S.L. 1993, Chapter 186, which is codified as §§ 33-2601 to 33-2620. The reference probably should be to “this chapter,” being chapter 26, title 33, Idaho Code.

A former § 33-2601, which comprised S.L. 1963, ch. 13, § 96, p. 27; 1975, ch. 105, § 1, p. 215 which had been deemed to have superseded a former § 33-2602 (1901, p. 3, § 2; am. R.C., § 676; am. 1911, ch. 159, § 178, p. 551; reen. C.L. 38:292; C.S., § 1036; I.C.A., § 32-2102; am. 1943, ch. 170, § 1, p. 358; am. 1955, ch. 129, § 1, p. 266), was amended and redesignated as § 33-2737 by § 1 of S.L. 1992, ch. 275. Section 1 of S.L. 1993, ch. 186 purported to repeal §§ 33-2601 through 33-2608, but the former § 33-2601 had already been amended and redesignated in 1992 prior to the repeal by S.L. 1993, Chapter 186.

A second former § 33-2601 was transferred to § 33-2602 in 1963 due to the recodification of the education law by S.L. 1963, Chapter 13.

**33-2602. Definitions.** — Unless a different meaning plainly is required in this chapter:

(1) “Nonpartisan” means not controlled or influenced by any single political party.

(2) “Board” means the group of trustees who manage the library.

(3) “Mayor” means the elected chief municipal officer of a city.

(4) “City manager” means a person appointed as chief municipal administrator by a city council.

(5) “City council” means the legislative body of a city.

**History.**

I.C., § 33-2602, as added by 1993, ch. 186, § 3, p. 467.

**STATUTORY NOTES**

**Cross References.**

Public library districts, § 33-2701 et seq.

**Prior Laws.**

Former § 33-2602, which comprised 1901, p. 3, § 1; am. R.C., § 675; reen. 1911, ch. 159, § 177, p. 551; reen. C.L. 38:291; am. 1919, ch. 137, § 1, p. 433; C.S., § 1035; I.C.A., § 32-2101; am. 1945, ch. 100, § 1, p. 150; am. 1955, ch. 130, § 1, p. 268; am. 1963, ch. 121, § 1, p. 350; am. 1990, ch. 378, § 11, p. 1046, and which had formerly been compiled as § 33-2601 but was transferred to § 33-2602 due to the recodification of the education title by S.L. 1963, ch. 13, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

**Compiler’s Notes.**

Another former § 33-2602, which comprised 1901, p. 3, § 2; am. R.C., § 676; am. 1911, ch. 159, § 178, p. 551; reen. C.L. 38:292; C.S., § 1036; I.C.A., § 32-2102; am. 1943, ch. 170, § 1, p. 358; am. 1955, ch. 129, § 1, p. 266, was superseded by S.L. 1963, ch. 13, § 96, p. 27; 1975, ch. 105, § 1, p.

215 which had been transferred to and compiled as § 33-2601 has been amended and redesignated as § 33-2737 by § 1 of S.L. 1992, ch. 275.

**33-2603. Cities may establish tax supported libraries.** — The city council of every city shall have power to establish a public library, and for such purpose may annually levy and cause to be collected a tax up to but not exceeding one-tenth percent (.10%) of market value for assessment purposes or fund a library out of allocations from the city's general fund. All such moneys shall be kept by the city treasurer separate and apart from other moneys of the city and be used exclusively for library purposes, provided that every city shall have power to contract for specified library service from an existing library, or become part of an existing library district, following the procedure outlined in section 33-2709, Idaho Code.

**History.**

I.C., § 33-2603, as added by 1993, ch. 186, § 4, p. 467.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2603, which comprised 1901, p. 3, § 3; reen. R.C., § 677; am. 1911, ch. 159, § 179, p. 552; reen. C.L. 38:293; C.S., § 1037; I.C.A., § 32-2103; am. 1959, ch. 19, § 3, p. 40, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

**33-2604. Board of trustees — Appointment — Term of office — Compensation.** — For the government of such library there shall be a board of five (5) library trustees appointed by the mayor and council pursuant to section 50-210, Idaho Code, from among city residents. If the city government is organized pursuant to sections 50-801 through 50-813, Idaho Code, the city manager and the council shall appoint the board of trustees.

Appointment to the board shall be made solely upon consideration of the ability of such appointees to serve the interests of the people, without regard to sex, age, race, nationality, religion, disability or political affiliation. A member of the city council shall not be one (1) of the five (5) appointed trustees of the library board, but each year the council shall appoint one (1) of its members to be a liaison to the board, without voting rights.

The initial appointment of trustees shall be for terms of one (1), two (2), three (3), four (4) and five (5) years respectively. Subsequent appointments shall be made for five (5) years from the date of appointment, and until their successors are appointed.

Members of the board shall serve without salary but may receive their actual and necessary budgeted expenses while engaged in authorized business of the library.

### **History.**

I.C., § 33-2604, as added by 1993, ch. 186, § 5, p. 467.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-2604, which comprised 1901, p. 3, § 4; am. R.C., § 678; am. 1911, ch. 159, § 180, p. 553; reen. C.L. 38:294; C.S., § 1038; I.C.A., § 32-2104; am. 1959, ch. 19, § 4, p. 40, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.



**33-2605. Board of trustees — Vacancies — Removal.** — The board shall report all vacancies to the council within five (5) working days. All such appointments shall be made in the same manner as appointments are originally made. Appointments to complete an unexpired term shall be for the remainder of the term only.

Any trustee may be removed by the city council by the unanimous vote of all of its members.

**History.**

I.C., § 33-2605, as added by 1993, ch. 186, § 6, p. 4676.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2605, which comprised 1901, p. 3, § 5; reen. R.C., § 679; reen. 1911, ch. 159, § 181, p. 553; reen. C.L. 38:295; C. S., § 1039; I.C.A., § 32-2105, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

**33-2606. Board of trustees — Meetings.** — The board of trustees shall meet at least once in each quarter unless required by city ordinance to meet more frequently. One (1) of the meetings shall be designated as the annual meeting. The purposes of the annual meeting are to elect the officers of the board, to establish a regular meeting date, and to review, amend, repeal or adopt bylaws, policies and procedures. Special meetings may be held from time to time as the board may determine, but written notice thereof shall be given to the members at least two (2) days prior to the day of the meeting. A quorum shall consist of three (3) voting members, but a smaller number may adjourn. All library board meetings are to be held pursuant to the open meeting law, chapter 2, title 74, Idaho Code.

**History.**

I.C., § 33-2606, as added by 1993, ch. 186, § 7, p. 467; am. 2014, ch. 68, § 1, p. 175; am. 2015, ch. 141, § 67, p. 379.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2606, which comprised 1901, p. 3, § 6; reen. R.C., § 680; am. 1911, ch. 159, § 182, p. 553; reen. C.L. 38:296; C.S., § 1040; I.C.A., § 32-2106; am. 1959, ch. 19, § 5, p. 40; am. 1981, ch. 85, § 1, p. 118, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

**Amendments.**

The 2014 amendment, by ch. 68, updated a reference in the last sentence to correct the scope of the open meetings law.

The 2015 amendment, by ch. 141, substituted “chapter 2, title 74” for “sections 67-2340 through 67-2347” in the last sentence.

**33-2607. Powers and duties of trustees.** — In addition to the powers elsewhere contained in this chapter and notwithstanding the provisions of title 50, Idaho Code, the board of trustees of each city library shall have the following powers and duties:

- (1) To establish bylaws for its own governance;
- (2) To establish policies and rules of use for the governance of the library or libraries under its control; to exclude from the use of the library any and all persons who violate such rules; (3) To establish, locate, maintain and have custody of libraries to serve the city, and to provide suitable rooms, structures, facilities, furniture, apparatus and appliances necessary for library service; (4) With the approval of the city:
  - (a) To acquire real property by purchase, gift, devise, lease or otherwise;
  - (b) To own and hold real and personal property and to construct buildings for the use and purposes of the library; (c) To sell, exchange or otherwise dispose of real or personal property when no longer required by the library; and (d) To insure the real and personal property of the library;
- (5) To prepare and adopt a budget for review and approval by the city council; (6) To control the expenditures of money budgeted for the library; (7) To accept or decline gifts of money or personal property, in accordance with library policy, and under such terms as may be a condition of the gift; (8) To hire, supervise and evaluate the library director;
- (9) To establish policies for the purchase and distribution of library materials; (10) To attend all meetings of the board of trustees;
- (11) To maintain legal records of all board business;
- (12) To exercise such other powers, not inconsistent with law, necessary for the orderly and efficient management of the library.

**History.**

I.C., § 33-2607, as added by 1993, ch. 186, § 8, p. 467.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2607, which comprised 1901, p. 3, § 7; reen. R.C., § 681; am. 1911, ch. 159, § 183, p. 554; reen. C.L. 38:297; C.S., § 1041; I.C.A., § 32-2107; am. 1959, ch. 19, § 6, p. 40, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

**33-2608. Library director — Duties — Other employees.** — The board of trustees of each city library shall appoint the library director, who shall serve at the pleasure of the board. The library director shall advise the board, implement policy set by the board, supervise all library staff and shall acquire library materials, equipment and supplies. The library director shall attend all board meetings but shall not vote.

With the recommendation of the library director, the board shall hire other employees as may be necessary for the operation of the library in accordance with city policies and procedures. These employees shall be employees of the city and subject to the city's personnel policies and classifications unless otherwise provided by city ordinance.

**History.**

I.C., § 33-2608, as added by 1993, ch. 186, § 9, p. 467.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2608, which comprised 1901, p. 3, § 8; am. R.C., § 682; am. 1911, ch. 159, § 184, p. 554; reen. C.L. 38:298; C.S., § 1042; I.C.A, § 32-2108, was repealed by S.L. 1993, ch. 186, § 1, effective July 1, 1993.

**33-2609. Annual appropriations — Control of expenditures.** — The board shall prepare and adopt an annual budget, stating anticipated revenues and expenditures, indicating what support and maintenance of the library will be required for review and approval by the city council for the ensuing year.

All funds for the library shall be in the custody of the city treasurer unless otherwise provided by city ordinance, and shall be used only for library purposes. The board shall have control of library expenditures. Money shall be paid for library purposes, only upon properly authenticated vouchers of the board of trustees. The board shall not make expenditures or incur indebtedness in any year in excess of the amount of money appropriated for library purposes. The board may hold a separate checking account to be used to pay petty expenses of the library. This account shall be audited along with other library funds.

**History.**

I.C., § 33-2609, as added by 1993, ch. 186, § 10, p. 467.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2609 was amended and redesignated as § 33-2612 by § 13 of S.L. 1993, ch. 186.

Another former §§ 33-2609 to 33-2620 (S.L. 1955, ch. 127, §§ 1 to 12; am. 1957, ch. 138, § 1, p. 230; am. 1959, ch. 19, §§ 7 to 9, p. 40) were repealed by S.L. 1963, ch. 188, § 22. For present law, see § 33-2701 et seq.

**33-2610. Donations.** — Donations or gifts for the benefit of the library shall be budgeted along with other library accounts and shall be used only for library purposes. Money or other funds which are donated or given to the library may be expended by the board of trustees only in accordance with the city budget process.

**History.**

I.C., § 33-2610, as added by 1993, ch. 186, § 11, p. 467.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2610 was amended and redesignated as § 33-2613 by § 14 of S.L. 1993, ch. 186.

Another former § 33-2610 was repealed. See Prior Laws, § 33-2609.

**33-2611. Reports of trustees.** — The board of trustees shall annually, not later than the first day of January, file with the board of library commissioners a report of the operations of the library for the fiscal year just ended. The report shall be of such form and contain such information as the board of library commissioners may require, but in all cases must include a complete accounting of all financial transactions for the fiscal year being reported. The board shall also report to the city council and mayor as required in section 50-210, Idaho Code.

**History.**

I.C., § 33-2611, as added by 1993, ch. 186, § 12, p. 467; am. 2006, ch. 235, § 9, p. 701.

**STATUTORY NOTES**

**Cross References.**

Board of library commissioners, § 33-2502.

**Prior Laws.**

Former § 33-2611 was amended and redesignated as § 33-2614 by § 15 of S.L. 1993, ch. 186.

Another former § 33-2611 was repealed. See Prior Laws, § 33-2609.

**Amendments.**

The 2006 amendment, by ch. 235, twice substituted “board of library commissioners” for “state library board.”



**33-2612. Regional library systems — Purpose — Boundaries.** — It is the purpose of this act to provide a method by which the library boards which govern Idaho's libraries, now or hereafter established in accordance with the Idaho Code, may contract to form regional library systems, in order to provide improved library and information services for residents of a multi-county region. The boundaries for library regions in Idaho shall be established by the Idaho board of library commissioners.

**History.**

1974, ch. 74, § 1, p. 1156; am. and redesign. 1993, ch. 186, § 13, p. 467; am. 2006, ch. 235, § 10, p. 701.

**STATUTORY NOTES**

**Cross References.**

Board of library commissioners, § 33-2502.

**Prior Laws.**

Former § 33-2612 was amended and redesignated as § 33-2615 by § 16 of S.L. 1993, ch. 186.

Another former § 33-2612 was repealed. See Prior Laws, § 33-2609.

**Amendments.**

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board.”

**Compiler's Notes.**

This section was formerly compiled as § 33-2609.

The term “this act” in the first sentence refers to S.L. 1974, Chapter 74, compiled as §§ 33-2612 to 33-2619. The reference probably should be to “this chapter,” being chapter 26, title 33, Idaho Code.

**33-2613. Definitions.** — As used in this act, unless the context otherwise requires:

(1) “Library board” means the five (5) citizens appointed, or elected, to govern a public library, a school community library, or a library district, in accordance with chapters 26 and 27, title 33, Idaho Code.

(2) “Participating board” or “participating library” means a board or library or district which is cooperating and participating in a regional library system.

(3) “Region” means that geographic area, with boundaries established by the board of library commissioners, wherein library units are encouraged to work together.

(4) “Regional system” means two (2) or more library boards formally contracting a system approved by the board of library commissioners, officially designated as a regional library system under this act, and therein working together in specific efforts to extend and improve library services to their resident constituents.

(5) “System board” means the governing board comprised of representatives of library boards in a regional system, and which is authorized to direct and plan library service for a regional system to the extent and in the manner provided by this act.

### **History.**

1974, ch. 74, § 2, p. 1156; am. and redesign. 1993, ch. 186, § 14, p. 467; am. 2006, ch. 235, § 11, p. 701.

## **STATUTORY NOTES**

### **Cross References.**

Board of library commissioners, § 33-2502.

### **Prior Laws.**

Former § 33-2613 was amended and redesignated as § 33-2616 by § 17 of S.L. 1993, ch. 186.

Another former § 33-2613 was repealed. See Prior Laws, § 33-2609.

**Amendments.**

The 2006 amendment, by ch. 235, in subsections (3) and (4), substituted “board of library commissioners” for “state library board”; and redesignated all subsections numerically.

**Compiler’s Notes.**

This section was formerly compiled as § 33-2610.

The term “this act” throughout this section refers to S.L. 1974, Chapter 74, compiled as §§ 33-2612 to 33-2619. The reference probably should be to “this chapter,” being chapter 26, title 33, Idaho Code.

**33-2614. Petition for establishment.** — Any two (2) or more library boards may petition the board of library commissioners for the establishment of a regional system. Such petition shall be prepared in cooperation with the state librarian, on forms provided by the commission for libraries, and shall include but shall not be limited to the following information:

(1) A statement of purpose and an outline of the proposed program of the regional system.

(2) A list of the participating libraries, with a listing of the current tax levy and budget of each such participant; the names and addresses of the members of each library board, and a letter or resolution from each such board regarding participation in the regional system.

(3) A list of the counties in the geographic region as a whole, the number of persons who are within taxing districts supporting existing libraries, and the number of persons outside such districts but within a county in the region, and thus potentially eligible for service from the regional system being established.

(4) Proposed number of persons to be on the initial system board of directors.

(5) Proposed headquarters for the regional system, accompanied by a copy of a resolution by the governing authority for that library approving its designation as headquarters and, if a member of the staff of the headquarters is to be the administrator of the system, including approval of such designation.

The board of library commissioners shall consider any petition presented to it as provided in this act, and if it approves such petition it shall adopt a resolution officially designating such particular regional library system, describing the territory thereof, and designating the headquarters and the initial number of directors for the system board.

**History.**

1974, ch. 74, § 3, p. 1156; am. and redesign. 1993, ch. 186, § 15, p. 467; am. 2006, ch. 235, § 12, p. 701.

## **STATUTORY NOTES**

### **Cross References.**

Commission for libraries, § 33-2501 et seq.

State librarian, § 33-2504.

### **Prior Laws.**

Former § 33-2614 was amended and redesignated as § 33-2617 by § 18 of S.L. 1993, ch. 186.

Another former § 33-2614 was repealed. See Prior Laws, § 33-2609.

### **Amendments.**

The 2006 amendment, by ch. 235, in the introductory paragraph, substituted “commission for libraries” for “state library”; in the introductory and final paragraphs, substituted “board of library commissioners” for “state library board”; and redesignated all subsections numerically.

### **Compiler’s Notes.**

This section was formerly compiled as § 33-2611.

The term “this act” in the last paragraph refers to S.L. 1974, Chapter 74, compiled as §§ 33-2612 to 33-2619. The reference probably should be to “this chapter,” being chapter 26, title 33, Idaho Code.

**33-2615. System board of directors.** — Each regional system shall be governed by a board of directors, to be selected by and from the governing boards of the participating libraries.

Initially, as the system is formed, each participating library shall be entitled to one (1) representative on the system board, and those libraries legally serving a population base of more than ten thousand (10,000) shall also be entitled to a second representative.

Within two (2) weeks after receiving notice of approval of a petition for establishment, as provided for under this act, the board of each participating library shall select its representative or representatives, and certify the names and addresses of such representatives to the state librarian.

As additional libraries, now or hereafter established, petition to join the system, the board shall not exceed twenty-five (25) in number. When the board members total twenty-five (25), or earlier with the unanimous agreement of the participating boards, the system board shall develop a plan for equitable rotation of trustees, while retaining representation from a library in each county. The designated headquarters for the system shall always have representation on the board.

At their first meeting the members of the system board shall divide themselves by lot into terms of one (1) to five (5) years. Thereafter, all vacancies shall be filled in the same manner as the original appointments, and appointments to complete an unexpired term shall be for the residue of the term only.

No member of any system board shall serve on the system board for more than five (5) consecutive years, and in no event shall service on the system board exceed the term of office of the incumbent on the governing board of the participating library which he represents.

The system board shall annually elect from its membership a chairman and such other officers as it may deem necessary to conduct the affairs of the system.

Members of the system board may receive from the regional system their actual and necessary expenses while engaged in business of said system.

**History.**

1974, ch. 74, § 4, p. 1156; am. and redesign. 1993, ch. 186, § 16, p. 467.

**STATUTORY NOTES****Cross References.**

State librarian, § 33-2504.

**Prior Laws.**

Former § 33-2615 was amended and redesignated as § 33-2618 by § 19 of S.L. 1993, ch. 186.

Another former § 33-2615 was repealed. See Prior Laws, § 33-2609.

**Compiler's Notes.**

This section was formerly compiled as § 33-2612.

The term “this act” in the third paragraph refers to S.L. 1974, Chapter 74, compiled as §§ 33-2612 to 33-2619. The reference probably should be to “this chapter,” being chapter 26, title 33, Idaho Code.

**33-2616. Powers and duties of the system board.** — The system board shall serve as a liaison agency between the participating libraries and their governing bodies and library boards. The system board shall make such bylaws, rules and regulations as may be necessary for its own government and that of the regional system, none of which shall deprive any participating library board of any of its powers or property.

The system board shall have the following powers and responsibilities, all of which relate to the functioning of the regional system and the management and control of its funds and property;

(1) To develop a long-range plan of service for the regional system, and annually to submit to the board of library commissioners any changes in said long-range plan, and a detailed plan of proposed system development and service for the following year.

(2) To provide improved library service for residents of the regional system, in cooperation with participating libraries, and to this end to purchase books and other library materials, supplies and equipment, for the system services, and to employ such personnel as the system board finds necessary.

(3) To set the administrator's hours and rate of compensation for regional system duties, and to delegate such administrative powers as the board deems in the best interest of the system.

(4) To enter into contracts to receive service from or to give service to other libraries, or agencies, within the state or interstate, and to file copies of such contracts with the board of library commissioners.

(5) To be a public corporation, as is provided for library districts, and to contract in the name of the "Board of directors of the ... regional library system, Idaho" and in that name to sue and be sued and to take any action authorized by law.

(6) To acquire by purchase, lease, or otherwise, and to own and hold real and personal property and to construct buildings for the use of the regional system, and to sell, exchange or otherwise dispose of property real or



personal when no longer required by the system, and to insure the real and personal property of the system.

(7) To have control of the expenditure of all funds of the regional system, to accept by gift or donation any funds and real or personal property under such terms as may be a condition of the gift.

(8) To exercise such other powers, not inconsistent with law, necessary for the effective use and management of the regional system.

### **History.**

1974, ch. 74, § 5, p. 1156; am. and redesign. 1993, ch. 186, § 17, p. 467; am. 2006, ch. 235, § 13, p. 701.

## **STATUTORY NOTES**

### **Cross References.**

Board of library commissioners, § 33-2502.

### **Prior Laws.**

Former § 33-2616 was amended and redesignated as § 33-2619 by § 20 of S.L. 1993, ch. 186.

Another former § 33-2616 was repealed. See Prior Laws, § 33-2609.

### **Amendments.**

The 2006 amendment, by ch. 235, in subsections (1) and (4), substituted “board of library commissioners” for “state library board”; and redesignated all subsections numerically.

### **Compiler’s Notes.**

This section was formerly compiled as § 33-2613.

**33-2617. Finance of regional systems — Budgets — Participating and nonparticipating units.** — Each regional system may be financed by any combination of available funds, federal, state, local, public and/or private. Counties, cities and library districts are hereby authorized and empowered to join in the creation, development, operation and maintenance of regional systems, and to appropriate and allocate funds for the support of such systems. All funds collected or contributed for the support of each regional system shall be controlled and administered under the direction of the system board, following procedures outlined in the library district statutes, and as directed by the board of library commissioners.

(1) Participating Units. Participating boards shall continue to control the funds appropriated or contributed for the support of the participating libraries, but may expend all or any part thereof for library services to be furnished by the regional system. Each participating board shall prepare its own annual budget as required by the Idaho Code, and said budget may include anticipated revenues or expenditures for regional system services. Tax levies made pursuant to each such budget shall be certified as provided by law.

(2) System Budget. Each system board shall prepare a preliminary budget for the system for the coming year, and shall by the last day of April forward said budget to the boards of participating libraries. This budget shall be published, and a hearing held thereon before the last day of May.

(3) Nonparticipating Areas. The system board shall also prepare a list of those areas within each county of the library region wherein public libraries, library districts, school-community libraries, or association libraries are not maintained as authorized in the Idaho Code. Such lists shall be forwarded to the board of library commissioners and to the board of county commissioners of each affected county. The system board shall include in its preliminary budget an estimate of the kinds of services which the system could provide to those areas without established libraries, and the cost of such services, and shall forward this to the appropriate boards of county commissioners.

**History.**

1974, ch. 74, § 6, p. 1156; am. 1982, ch. 82, § 1, p. 150; am. and redesign. 1993, ch. 186, § 18, p. 467; am. 2006, ch. 235, § 14, p. 701.

## **STATUTORY NOTES**

### **Cross References.**

Board of library commissioners, § 33-2502.

### **Prior Laws.**

Former § 33-2617 was amended and redesignated as § 33-2620 by § 21 of S.L. 1993, ch. 186.

Another former § 33-2617 was repealed. See Prior Laws, § 33-2609.

### **Amendments.**

The 2006 amendment, by ch. 235, in the introductory paragraph and in subsection (3), substituted “board of library commissioners” for “state library board”; and redesignated all subsections numerically.

### **Compiler’s Notes.**

This section was formerly compiled as § 33-2614.

### **Effective Dates.**

Section 2 of S.L. 1982, ch. 82 declared an emergency. Approved March 17, 1982.

**33-2618. Addition to or withdrawal from a regional system.** — (1) After the establishment of a regional system as provided in this act, the board of any library which is not a part of the system, and which is within the boundaries of a library region as established by the Idaho board of library commissioners, may petition the board of library commissioners for addition to the regional system.

Petitions for addition shall be prepared and processed as provided in this act for initial petitions, except that prior approval in writing shall be obtained by the petitioning board from the regional system board, and shall be attached to the petition when it is submitted to the board of library commissioners.

(2) After the establishment of a regional system as provided in this act, a participating library board may petition the board of library commissioners for withdrawal from the system. A petition for withdrawal must be received by the board of library commissioners at least sixty (60) days before the end of the fiscal year of the system.

All assets of a participating library remain the property of that library, and if a unit withdraws from a system the disposal of the joint assets of the system shall be determined by the board of library commissioners, who shall give consideration to such items as the amount of funds raised from each unit of the system, and the ability of the units to make further use of such property or equipment for library purposes.

**History.**

1974, ch. 74, § 7, p. 1156; am. and redesign. 1993, ch. 186, § 19, p. 467; am. 2006, ch. 235, § 15, p. 701.

**STATUTORY NOTES**

**Cross References.**

Board of library commissioners, § 33-2502.

**Prior Laws.**

Former § 33-2618 was repealed. See Prior Laws, § 33-2609.

**Amendments.**

The 2006 amendment, by ch. 235, throughout the section, substituted “board of library commissioners” for “state library board.”

**Compiler’s Notes.**

This section was formerly compiled as § 33-2615.

The term “this act” throughout this section refer to S.L. 1974, Chapter 74, compiled as §§ 33-2612 to 33-2619. The reference probably should be to “this chapter,” being chapter 26, title 33, Idaho Code.

**33-2619. Administration of act by board of library commissioners. —**

The Idaho board of library commissioners shall administer the provisions of this act, and shall adopt such rules as are necessary for approval of regional system petitions, review and amendment of regional system plans and contracts, and such other matters as the board of library commissioners may deem advisable.

**History.**

1974, ch. 74, § 8, p. 1156; am. and redesign. 1993, ch. 186, § 20, p. 467; am. 2006, ch. 235, § 16, p. 701.

**STATUTORY NOTES**

**Cross References.**

Board of library commissioners, § 33-2502.

**Prior Laws.**

Former § 33-2619 was repealed. See Prior Laws, § 33-2609.

**Amendments.**

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” and deleted “and regulations” following “rules.”

**Compiler’s Notes.**

This section was formerly compiled as § 33-2616.

The term “this act” refers to S.L. 1974, Chapter 74, compiled as §§ 33-2612 to 33-2619. The reference probably should be to “this chapter,” being chapter 26, title 33, Idaho Code.

Section 9 of S.L. 1974, ch. 74, read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

**33-2620. Failure to return borrowed material.** — Any person who borrows from a publicly funded lending facility any book, newspaper, magazine, manuscript, pamphlet, publication, microform, recording, film, artifact, specimen, device, exhibit or other article belonging to, or in the care of, the facility, under any agreement to return the same within a specified time, and thereafter fails to return the book, newspaper, magazine, manuscript, pamphlet, publication, microform, recording, film, artifact, specimen, device, exhibit or other article, shall be given written notice, which shall bear upon its face a copy of this statute, mailed by a registered or certified letter with return receipt, or delivered in person to such person at his last known address, to return the borrowed article within fifteen (15) days; and in the event that the person shall thereafter wilfully and knowingly fail to return the borrowed article within thirty (30) days, or shall fail to reimburse the facility for the value of the borrowed article plus overdue fines and costs incurred, the person shall be guilty of a petit theft and punishable as provided in chapter 24, title 18, Idaho Code. For purposes of this section, a “publicly funded lending facility” includes any library, gallery, museum, collection or exhibit supported by public funds.

**History.**

I.C., § 33-2617, as added by 1991, ch. 265, § 1, p. 654; am. and redesign. 1993, ch. 186, § 21, p. 467.

**STATUTORY NOTES**

**Cross References.**

Punishment for theft, § 18-2408.

**Prior Laws.**

Former § 33-2620 was repealed. See Prior Laws, § 33-2609.

**Compiler’s Notes.**

This section was formerly compiled as § 33-2617.

**33-2621 — 33-2638. Board of trustees — Election — Organization — Appointment of chief librarian and other employees of library district — Library districts organization — Library funds — Dissolution of library district — Reports. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1955, ch. 127, §§ 13-31, p. 245; 1957, ch. 188, §§ 1, 2, p. 374; 1959, ch. 19, § 10, p. 40, were repealed by S.L. 1963, ch. 188, § 22. For present law see § 33-2701 et seq.





## **CHAPTER 27**

### **PUBLIC LIBRARY DISTRICTS**

#### **Section.**

33-2701. Purpose and policy.

33-2702. Definitions.

33-2703. Library districts — Territory — Establishment — Limitations.

33-2704. Petition — Verification — Notice and hearing.

33-2704A. Notice and public hearing. [Repealed.]

33-2705. Conduct of election.

33-2706. Establishment of library district embracing more than one county.

33-2707. Addition of territory not having a tax supported library to a library district — Petitions and signatures — Election.

33-2708. Addition of territory not having a tax supported library to a library district — Alternate method.

33-2709. Existing tax supported city libraries may join library districts.

33-2710. Determination of the property portion of the budget for consolidated libraries — District and district — District and city.

33-2710A, 33-2710B. [Amended and Redesignated.]

33-2711. Consolidation of library districts.

33-2711A. Adjustment of boundary lines between existing public library districts.

33-2712. Notice of filing of petition or petitions for organizing a library district, for adding to or adjusting boundaries of library districts — Confirmation of existing library districts. [Repealed.]

33-2713. Dissolution of library district.

33-2713A. [Amended and Redesignated.]

33-2714. Library districts — Public corporations.

33-2715. Board of trustees — Selection — Number — Qualifications — Term — Oath — Appointment of first board.

33-2716. Board of trustees — Nomination and election — Recall — Vacancies.

33-2717. Board of trustees — One nomination — No election.

33-2717A. Declaration of intent for write-in candidate.

33-2717B. Withdrawal of candidacy. [Repealed.]

33-2717C. Procedure for correction of ballots. [Repealed.]

33-2718. Creation of trustee zones.

33-2719. Board of trustees — Meetings.

33-2720. Powers and duties of the board of trustees.

33-2721. Library director — Director team — Employees.

33-2722. Treasurer — Clerk.

33-2722A — 33-2722C. [Amended and Redesignated.]

33-2723. [Amended and Redesignated.]

33-2724. Taxes for the support of library district — Tax anticipation loans — Carry over authority — Capital assets replacement and repair fund.

33-2725. Library district budget — Public hearing — Notice — Adjustments.

33-2726. Fiscal year — Annual reports — Audit.

33-2727. Contracts — Joint powers agreements — Participation in nonprofit corporations.

33-2728. Bond election.

33-2729. Plant facilities reserve fund and levy.

33-2730 — 33-2736. [Reserved.]

33-2737. School-community library districts.

33-2738. School-community library districts — Board of trustees — Trustee zones.

33-2739. School-community library districts — Board of trustees — Powers and duties — Fiscal year.

33-2740. School-community library districts — Consolidation — Reorganization into library districts.

33-2741. Public library — Internet use policy required.

**33-2701. Purpose and policy.** — It is hereby declared to be the policy of the state of Idaho, as a part of the provisions for public education, to promote the establishment and development of public library service for all the people of Idaho. By so declaring, the state acknowledges that the ability of its citizens to access information has a critical impact on the state's educational success, economic development, provision for an informed electorate, and overall quality of life. It is the purpose of this chapter to integrate, extend and add to existing library services and resources so that public library service may be available to all residents of the state from infancy through adulthood, beginning in the formative years and continuing for lifelong learning.

**History.**

1963, ch. 188, § 1, p. 568; am. 1995, ch. 119, § 1, p. 513; am. 1996, ch. 71, § 2, p. 216; am. 2002, ch. 312, § 1, p. 886.

**STATUTORY NOTES**

**Cross References.**

Cities, authority to establish libraries, § 33-2603.

Library trustees, powers and duties, § 33-2607.

**JUDICIAL DECISIONS**

**Cited in:** Greater Boise Auditorium Dist. v. Royal Inn, 106 Idaho 884, 684 P.2d 286 (1984).

**33-2702. Definitions.** — As used in this chapter:

(1) “Administrative only district” is a library district that does not serve the public directly and has no direct service outlets or collections, but which contracts with other library entities to provide various public library services.

(2) “City library” means a library established by a city ordinance and operating under the provisions of chapter 26, title 33, Idaho Code.

(3) “Home county” means the county where the designated district headquarters is located when a public library district’s boundaries include territory located in more than one (1) county.

(4) “Library director” or “library director team” means an employee or group of employees of a public library district charged with the administration and management of library services for that district.

(5) “Public library district trustee” means a qualified elector living within the boundaries of a public library district who is elected or appointed temporarily to fulfill the duties described in this chapter related to the governance of a public library district.

(6) “Public library service” means the provision of planned collections of materials and information services provided by a library established under the provisions of chapter 26 or 27, title 33, Idaho Code, and paid for primarily through tax support provided under these statutes. These services shall be provided at a facility, accessible to the public at regularly scheduled hours and set aside for this purpose. The services shall be governed by a citizen board appointed or elected for this purpose and shall be administered and operated by paid staff who have received appropriate training in library skills and management. The services shall meet standards established by the board of library commissioners.

(7) “Qualified elector” means any person voting, or offering to vote, at an election to create a library district, add territory thereto, or elect trustees thereof. A qualified elector must be, at the time of the election, a resident of the area involved for thirty (30) days prior to the date of the election,

registered and an elector within the meaning of [section 2, article VI, of the Constitution](#) of the state of Idaho.

**History.**

1963, ch. 188, § 2, p. 568; am. 1965, ch. 255, § 1, p. 648; am. 1993, ch. 303, § 1, p. 1124; am. 1996, ch. 71, § 3, p. 216; am. 2002, ch. 312, § 2, p. 886; am. 2006, ch. 235, § 17, p. 701.

**STATUTORY NOTES**

**Cross References.**

Board of library commissioners, § 33-2502.

**Amendments.**

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” in subsection (6).

**33-2703. Library districts — Territory — Establishment — Limitations.** — A library district may be established by vote of the qualified electors of the proposed district in an election called and held as provided by this chapter, with the following limitations:

(1) The district may include incorporated or unincorporated territory or both in one (1) or more counties and may include any of the area thereof except as may be excluded by this section, and as finally fixed and determined by the board of county commissioners.

(2) The territory of the district shall be continuous, and no territory of an incorporated municipality shall be divided.

(3) In the initial establishment of a library district the following may be excluded:

(a) A municipality which is already providing library service as established according to [section 33-2603, Idaho Code](#); or

(b) A library district which is already providing library service as established in accordance with the provisions of this chapter.

(4) If, subsequent to the establishment of a library district, any area thereof is annexed to a municipality which maintains a tax-supported library, this area shall cease to be a part of the library district and the city council of the municipality shall so notify the board of county commissioners.

(5) Any proposed library district shall have a population of more than one thousand five hundred (1,500) and an annual budget of not less than twenty-five thousand dollars (\$25,000) from ad valorem revenues. Any proposed library district not meeting the above criteria may apply to the board of library commissioners for an exemption.

### **History.**

1963, ch. 188, § 3, p. 568; am. 1967, ch. 93, § 1, p. 198; am. 1990, ch. 378, § 1, p. 1046; am. 1995, ch. 119, § 2, p. 513; am. 1996, ch. 71, § 4, p. 216; am. 2006, ch. 235, § 18, p. 701.



## **STATUTORY NOTES**

### **Cross References.**

Board of library commissioners, § 33-2502.

### **Amendments.**

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” in subsection (5).

**33-2704. Petition — Verification — Notice and hearing.** — (1) A petition or petitions, signed by fifty (50) or more qualified electors residing in the proposed library district, giving the name of the proposed district, describing the boundaries thereof including a map prepared in a draftsmanlike manner, and praying for the establishment of the territory therein described as a public library district, shall be filed with the clerk or clerks of the boards of county commissioners of the counties in which the proposed district is situated.

The petition or petitions shall be verified by at least one (1) qualified elector, which verification shall state that the affiant knows that all of the parties whose names are signed to the petition are qualified electors of the proposed district, and that their signatures to the petition were made in his presence. The verification may be made before any notary public.

(2) When the petition or petitions are presented to the board of county commissioners and filed in the office of the clerk of the board, the board shall set the time for a hearing, which time shall be not less than three (3) nor more than six (6) weeks from the date of the presentation and filing of the petition. Notice of the time of hearing shall be published by the board at least once a week for two (2) weeks prior to the time set for the hearing, in a newspaper of general circulation within the county in which the proposed district is situated.

(3) The notice shall state that a library district is proposed to be established, giving the proposed boundaries and name thereof, and that any resident elector within the proposed boundaries of the proposed district may appear and be heard in regard to:

- (a) The form of the petition;
- (b) The genuineness of the signatures;
- (c) The legality of the proceedings; and
- (d) Any other matters in regard to the creation of the library district.

(4) Concurrently with the notice of hearing, the board of county commissioners shall notify, in writing, the governing body of any tax

supported library within the boundaries of the proposed library district. If any governing body decides that it is not in the best interest of library services to be included within the proposed library district, they shall present a resolution stating this to the county commissioners, not less than one (1) week prior to the date of hearing.

(5) No later than ten (10) days after the hearing, the board of county commissioners shall make an order thereon with or without modification, based upon the public hearing and their determination of whether the proposed library district would be in keeping with the declared public policy of the state of Idaho in regard to library districts as more particularly set forth in [section 33-2701, Idaho Code](#), and, shall accordingly fix the boundaries and certify the name of the proposed district in the order granting the petition. The boundaries so fixed shall be the boundaries of the district after its establishment is completed as provided in this chapter.

**History.**

1963, ch. 188, § 4, p. 568; am. 1989, ch. 132, § 1, p. 286; am. 1990, ch. 378, § 2, p. 1046; am. 1995, ch. 119, § 3, p. 513; am. 1996, ch. 71, § 5, p. 216.

**33-2704A. Notice and public hearing. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which compromised I.C., § 33-2704A, as added by 1967, ch. 93, § 2, p. 198, was repealed by S.L. 1989, ch. 132, § 2.

**33-2705. Conduct of election.** — Upon the county commissioners having made the order referred to in subsection (5) of section 33-2704, Idaho Code, the clerk of the board of county commissioners shall cause to be published a notice of an election to be held for the purpose of determining whether or not the proposed library district shall be established under the provisions of this chapter. The date of this election shall be the next uniform election date as provided for in section 34-106, Idaho Code. Whenever more than one (1) petition is presented to the county commissioners calling for an election to create library districts, the first presented shall take precedence. Notice of the election shall be given, the election shall be conducted, and the returns thereof canvassed as provided for in chapter 14, title 34, Idaho Code, and under the general election laws of the state of Idaho. The ballot shall contain the words “(Name) Library District—Yes” and “(Name) Library District—No,” each followed by a box wherein the voter may express his choice by marking a cross “X.” The board or boards of election shall make returns and certify the results to the boards of county commissioners within three (3) days after the election, and the board of county commissioners shall, within seven (7) days after the election, canvass the returns. If a majority of all votes cast be in the affirmative, the board of county commissioners shall, within seven (7) days after the returns have been canvassed, enter an order declaring the library district established, designating its name and boundaries including a map prepared in a draftsmanlike manner. The board of county commissioners shall transmit a copy of the order to the county recorder, county assessor, and the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the election was held. A copy of the order shall also be transmitted to the board of library commissioners.

### **History.**

1963, ch. 188, § 5, p. 568; am. 1965, ch. 255, § 2, p. 648; am. 1967, ch. 93, § 3, p. 198; am. 1989, ch. 132, § 3, p. 286; am. 1990, ch. 378, § 3, p. 1046; am. 1993, ch. 303, § 2, p. 1124; am. 1995, ch. 119, § 4, p. 513; am. 1996, ch. 71, § 6, p. 216; am. 2006, ch. 235, § 19, p. 701.

### **STATUTORY NOTES**

**Cross References.**

Board of library commissioners, § 33-2502.

State tax commission, § 63-101.

**Amendments.**

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” at the end.

**Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**33-2706. Establishment of library district embracing more than one county.** — When the proposed library district embraces more than one (1) county, the petition and procedure for praying for the establishment of the district shall be carried forward in each county as though that county were the only county affected. Each petition shall designate the same home county for the proposed district.

The board of county commissioners of the home county shall advise with the board of county commissioners in any other county affected to the end that the election shall be held in each county on the same day. The board of county commissioners in each county shall proceed in the conduct of the election as though the election were being held only in that county as set forth in [section 33-2705, Idaho Code](#). After the canvass of the returns, the results in each other county shall be certified to the board of county commissioners of the home county, together with all ballots and tally sheets. The board of county commissioners of the home county shall canvass all returns and certify the results of the election to the board of county commissioners of any other county affected. The proposal shall be deemed approved only if a majority of all votes cast in each county were cast in the affirmative. If this is the case, the board of county commissioners of the home county shall enter an order declaring the library district to be created, designating its name and boundaries, including a map prepared in a draftsmanlike manner. A certified copy of the order shall be transmitted by the board of county commissioners to the county recorder, the county assessor and the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the election was held. A copy of this order shall also be transmitted to the board(s) of county commissioners of any other county affected, which shall enter the order in its minutes. A copy of this order shall also be transmitted to the board of library commissioners.

### **History.**

1963, ch. 188, § 6, p. 27; am. 1996, ch. 71, § 7, p. 216; am. 2006, ch. 235, § 20, p. 701.

## **STATUTORY NOTES**

### **Cross References.**

Board of library commissioners, § 33-2502.

State tax commission, § 63-101.

### **Amendments.**

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” at the end.

### **Compiler’s Notes.**

The “s” enclosed in parentheses so appeared in the law as enacted.



**33-2707. Addition of territory not having a tax supported library to a library district — Petitions and signatures — Election.** — (1) Any area which does not have a tax supported library and which is contiguous to an existing library district may become a part of the district by petition and election.

(2) A petition may arise as set forth in [section 33-2704, Idaho Code](#), in the area seeking to become a part of the library district. A true copy of the petition shall be transmitted to the board of trustees of the district, and to the board of county commissioners in each county affected. The board of trustees of the library district may approve or disapprove the petition, and shall give notice of its decision to the board of county commissioners in each county affected.

(3) When the notice carries the approval of the board of trustees of the district, the board of county commissioners in the county in which the petition arose shall enter its order calling for an election on the question. The election shall be held in the area described in the petition. Notice of the election shall be given, the election shall be conducted on the next uniform election date as provided in [section 34-106, Idaho Code](#), and the returns thereof canvassed as provided in [section 33-2705, Idaho Code](#). The ballot shall bear the question: “Shall .... become a part of the .... (Name) Library District .... Yes” and “Shall .... become a part of the .... (Name) Library District .... No,” each followed by a box in which the voter may express his choice by marking a cross “X.” The proposal shall be deemed approved only if the majority of the votes cast in the area seeking to become a part thereof is in the affirmative.

(4) If the proposal has been approved by the majority herein required, the board of county commissioners of the home county of the district shall enter its order amending the boundaries of the district, including a map prepared in a draftsmanlike manner. A copy of this order shall be transmitted to the board of trustees of the library district, to each board of county commissioners of the county in which the district lies, and to the board of library commissioners.

(5) The board of trustees of the library shall transmit a certified copy of this order to the county recorder, the county assessor of the home county and to the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the election was held.

(6) Addition of new territory to an existing library district shall not be considered an initial establishment. The existing board of trustees shall continue to serve for the terms for which elected. When a vacancy occurs appointment shall be made as provided in [section 33-2716, Idaho Code](#).

**History.**

1963, ch. 188, § 7, p. 568; am. 1990, ch. 378, § 4, p. 1046; am. 1995, ch. 119, § 5, p. 513; am. 1996, ch. 71, § 8, p. 216; am. 2006, ch. 235, § 21, p. 701.

**STATUTORY NOTES**

**Cross References.**

Board of library commissioners, § 33-2502.

State tax commission, § 63-101.

**Amendments.**

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” in subsection (4).

**Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**33-2708. Addition of territory not having a tax supported library to a library district — Alternate method.** — (1) An alternate method of adding territory to a library district may be initiated by a petition or petitions as set forth in section 33-2704, Idaho Code, except that the petitions must be signed by sixty percent (60%) of the qualified electors in the area to be annexed.

(2) A true copy of the petitions shall be transmitted to the board of trustees of the library district and to the board of county commissioners in each county affected. The board of trustees may approve or disapprove the petition, and shall give notice of its decision to the board of county commissioners in each county affected.

(3) When the notice carries the approval of the board of trustees of the district, the board of county commissioners of the county in which the petition arose shall proceed with the required hearing and resolution as outlined in [section 33-2704, Idaho Code](#).

(4) When the proposal has the approval of the board of county commissioners, the board of trustees of the district and the board of county commissioners shall follow these procedures:

(a) If the proposal has been approved by the majority herein required, the board of county commissioners of the home county of the district shall enter its order amending the boundaries of the district, including a map drawn in a draftsmanlike manner, and transmit a copy of the order to the board of county commissioners in the county in which the petition arose. A copy of this order shall also be sent to the board of library commissioners.

(b) The board of trustees of the library district shall transmit a copy of the order to the county recorder, the county assessor of the home county, and the state tax commission in a timely manner, but no later than December 15, in the calendar year in which the order was granted.

(c) Addition of new territory to an existing library district shall not be considered an initial establishment. The existing board of trustees shall continue to serve for the terms for which elected. When a vacancy

occurs, appointment shall be made as provided in [section 33-2716, Idaho Code](#).

**History.**

[I.C., § 33-2708](#), as added by 1990, ch. 378, § 5, p. 1046; am. 1996, ch. 71, § 9, p. 216; am. 2006, ch. 235, § 22, p. 701.

**STATUTORY NOTES**

**Cross References.**

Board of library commissioners, § 33-2502.

State tax commission, § 63-101.

**Amendments.**

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” in subsection (4)(a).

**Compiler’s Notes.**

Former § 33-2708 was amended and redesignated as § 33-2709 by § 6 of S.L. 1990, ch. 378.

**33-2709. Existing tax supported city libraries may join library districts.** — Any tax supported city library may join an established library district by majority vote of the qualified electors of the city according to procedure set forth in section 33-2707, Idaho Code. A true copy of the petition and the district library board's notice of approval or disapproval shall be sent to the city council. When the notice carries the approval of the district library board, the city clerk shall order the election and give notice to the county clerk who shall conduct the election in a manner consistent with chapter 14, title 34, Idaho Code, and at such time as prescribed in section 34-106, Idaho Code. After receiving the certification of results of the election from the county clerk, the city council shall give notice of those results to the library district board and the board of county commissioners.

If the proposal has been approved by the majority required, the board of county commissioners of the home county of the district shall enter its order amending the boundaries of the district, including a map drawn in a draftsmanlike manner, and a copy shall be transmitted to the board of trustees of the library district, to the board of county commissioners of the county in which the petition arose, and to the board of library commissioners.

The board of trustees of the library district shall transmit a copy of the order to the county recorder, the county assessor of the home county and the state tax commission in a timely manner, but no later than December 15, in the year in which the election was held.

Addition of new territory to an existing library district shall not be considered an initial establishment. The existing district board of trustees shall continue to serve for the terms for which elected. When a vacancy occurs, appointment shall be made as provided in [section 33-2716, Idaho Code](#).

### **History.**

1963, ch. 188, § 8, p. 568; am. and redesign. 1990, ch. 378, § 6, p. 1046; am. 1996, ch. 71, § 10, p. 216; am. 2006, ch. 235, § 23, p. 701; am. 2013, ch. 135, § 1, p. 307.

## STATUTORY NOTES

### Cross References.

Board of library commissioners, § 33-2502.

State tax commission, § 63-101.

### Prior Laws.

Former § 33-2709 was amended and redesignated as § 33-2715 by § 10 of S.L. 1989, ch. 132.

Another former § 33-2709, which comprised [I.C., § 33-2722](#), as added by 1965, ch. 255, § 5, p. 648; am. 1967, ch. 93, § 4, p. 198; redesign. and am. 1989, ch. 132, § 4, p. 286, was repealed by S.L. 1990, ch. 378, § 7.

### Amendments.

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” in the second paragraph.

The 2013 amendment, by ch. 135, in the first paragraph, substituted “clerk shall order the election and give notice to the county clerk who shall conduct the election in a manner consistent with chapter 14, title 34, Idaho Code, and at such time as prescribed in [section 34-106, Idaho Code](#)” for “council shall conduct the election and give notice of the results to the library district board and the board of county commissioners” at the end of the third sentence and added the last sentence.

### Compiler’s Notes.

This section was formerly compiled as § 33-2708.

### Effective Dates.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

**33-2710. Determination of the property portion of the budget for consolidated libraries — District and district — District and city. —** (1) When two (2) district libraries have agreed to consolidate, the property tax portion of the new consolidated district's first budget will be determined in the following manner.

The property tax portion of each district's most recent annual certified budget will be added together. The resulting figure will be considered the dollar amount of property taxes on which to base the first annual budget for the new consolidated district. The provisions of [section 63-802, Idaho Code](#), shall be applied to this dollar amount.

(2) When a tax supported city library has voted to consolidate with a district library, the property tax portion of the new consolidated district's first annual budget will be determined in the following manner.

The city library budget figure will be defined as the budget for library services, whether from the general fund and/or the library fund, in the city's annual certified budget in effect on the date the election was held, less fines, fees, and any other identifiable revenues from nontax sources, and any grants made directly to the city library board. The city library budget figure will be added to the property tax portion of the public library district's annual certified budget in effect on the date the election was held. The resulting figure will be considered the dollar amount of property taxes on which to base the first annual budget for the new consolidated district. The provisions of [section 63-802, Idaho Code](#), shall be applied to this dollar amount.

If the city has established a dedicated library fund in effect on the date the election was held, those dollars will be removed from the city budget in the fiscal year in which the newly consolidated district begins to levy to provide library services.

(3) In any consolidation, the dollar amount of property taxes for the new consolidated district's budget shall not exceed six hundredths percent (.06%) of the market value for assessment purposes of all taxable property within the district.

(4) In any consolidation, the existing bonded debt of any district or districts shall not become the obligation of the proposed consolidated library district. The debt shall remain an obligation of the property which incurred the indebtedness.

**History.**

**I.C., § 33-2710**, as added by 1990, ch. 378, § 8, p. 1046; am. 1991, ch. 10, § 1, p. 26; am. 1995, ch. 119, § 6, p. 513; am. 1996, ch. 71, § 11, p. 216; am. 1997, ch. 117, § 6, p. 298; am. 2003, ch. 203, § 1, p. 543.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2710, which comprised **I.C., § 33-2722A**, as added by 1973, ch. 102, § 2, p. 172; am. and redesign. 1989, ch. 132, § 5, p. 286, was repealed by S.L. 1990, ch. 378, § 7.

Another former § 33-2710 (S.L. 1963, ch. 188, § 10, p. 568) was repealed by S.L. 1980, ch. 231, § 1.

**Compiler's Notes.**

Another former § 33-2710 was amended and redesignated as § 33-2716 by § 11 of S.L. 1989, ch. 132.

**Effective Dates.**

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that sections 1 to 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.



• Title 33 », « Ch. 27 », « 33-2710A. »

Idaho Code 33-2710A

**33-2710A. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section was amended and redesignated as § 33-2717 by § 12 of S.L. 1989, ch. 132.

• Title 33 », « Ch. 27 », « 33-2710B. »

Idaho Code 33-2710B

**33-2710B. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section was amended and redesignated as § 33-2718 by § 13, S.L. 1989, ch. 132.

**33-2711. Consolidation of library districts.** — When there are two (2) or more library districts, which have at least one (1) common boundary, the boards of trustees of the library districts, meeting together, may determine that it is in the best interest of library service that the districts be consolidated, as herein provided.

The boards of trustees shall jointly prepare a petition describing the boundaries of the existing library districts, the names of the existing library districts, and praying for the reorganization of the territory therein described as one (1) or more library districts to be known as the “.... (Name) Library District” and with boundaries as set forth in the petition.

The petition shall be signed by the chairpersons of the library boards upon majority approval of the respective boards involved in the consolidation.

The petition shall be forwarded to the clerk of the board of county commissioners in all counties affected, who shall verify the signatures, and shall file the petition. Thereupon, the board of county commissioners in all counties affected shall proceed with the hearing and resolution as outlined in [section 33-2704, Idaho Code](#). Upon completion of the hearing, the board of county commissioners shall issue an order granting the petition.

In the order granting the petition of consolidation, the board of county commissioners in all counties affected shall certify the new boundaries and the name of the district.

A copy of the order shall be transmitted to the board of trustees of the library districts involved, and to the board of library commissioners.

Other notices required by law shall be filed by the board of trustees of the district, including a legal description and map of altered boundaries prepared in a draftsmanlike manner to be filed with the board(s) of county commissioners, the county recorder, the county assessor of the home county, the board of library commissioners, and the state tax commission in a timely manner, but no later than December 15, of the year in which consolidation takes place.

The board of county commissioners of the home county of the consolidated public library district shall within ten (10) days take action to reaffirm members of the board of trustees, or to appoint members of the board, who shall be chosen from the members of the boards initiating the consolidation. These trustees shall serve until the next annual election of trustees or until their successors are elected and qualified as in [section 33-2715, Idaho Code](#). The board of trustees shall take the oath of office as outlined in [section 33-2715, Idaho Code](#).

### **History.**

[I.C., § 33-2722B](#), as added by 1973, ch. 102, § 3, p. 172; am. and redesign. 1989, ch. 132, § 6, p. 286; am. 1990, ch. 378, § 9, p. 1046; am. 1995, ch. 119, § 7, p. 513; am. 1996, ch. 71, § 12, p. 216; am. 2006, ch. 235, § 24, p. 701.

## **STATUTORY NOTES**

### **Cross References.**

Board of library commissioners, § 33-2502.

State tax commission, § 63-101.

### **Amendments.**

The 2006 amendment, by ch. 235, in the sixth and seventh paragraphs, substituted “board of library commissioners” for “state library board.”

### **Compiler’s Notes.**

This section was formerly compiled as § 33-2722B.

Former § 33-2711 was amended and redesignated as § 33-2719 by § 14 of S.L. 1989, ch. 132.

The “s” enclosed in parentheses so appeared in the law as enacted.

**33-2711A. Adjustment of boundary lines between existing public library districts.** — When the boards of two (2) public library districts having a common boundary determine that it is in the best interest of public library service that an adjustment of library district boundaries be made, this adjustment may be made using the following procedure.

The board of trustees shall jointly prepare a petition describing the boundaries of both the existing and proposed public library district, including maps prepared in a draftsmanlike manner, and the names of the public library districts, praying for the reorganization of the territory therein described.

The petition shall be signed by the chairperson of the library boards upon majority approval of the respective boards involved in the boundary adjustment.

The petition shall be forwarded to the clerk of the board(s) of county commissioners in all counties affected, who shall verify the signatures, and shall file the petition. Thereupon, the boards of county commissioners in all counties affected shall proceed with the hearing and resolution as outlined in [section 33-2711, Idaho Code](#). Upon the completion of the hearing, the board of county commissioners shall issue an order granting the petition.

**History.**

[I.C., § 33-2711A](#), as added by 1996, ch. 71, § 13, p. 216.

**STATUTORY NOTES**

**Compiler's Notes.**

The “s” enclosed in parentheses so appeared in the law as enacted.

**33-2712. Notice of filing of petition or petitions for organizing a library district, for adding to or adjusting boundaries of library districts — Confirmation of existing library districts. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 33-2722C**, as added by 1973, ch. 102, § 4, p. 172; am. 1987, ch. 201, § 1, p. 422; am. and redesign. 1989, ch. 132, § 7, p. 286, was repealed by S.L. 1995, ch. 119, § 8, effective July 1, 1995.

**33-2713. Dissolution of library district.** — A library district may be dissolved according to procedures followed in its original organization, but not earlier than four (4) years after the date of its establishment. The ballot shall contain the words “Shall (Name) Public Library District be dissolved — Yes” and “Shall (Name) Public Library District be dissolved—No,” each followed by a box wherein a voter may express his choice by marking a cross “X”. If the library district embraces territory in more than one (1) county, an election for its dissolution shall be deemed approved only if a majority of the votes cast in each such county were cast in the affirmative. If, upon the canvass of ballots, it is determined that the proposition has been approved, the board of county commissioners of the home county shall enter its order to that effect and transmit a copy of said order to the board of county commissioners in any other county affected, and said order shall by them be made a matter of record. When any library district is dissolved, all property and assets of the library district shall be disposed of by the board of county commissioners of the home county. Receipts from the sale of assets and all unpaid taxes, when collected, shall be first used to retire any indebtedness of the district. Any remainder shall be apportioned to the counties embraced in the library district in proportion to the assessed valuation of each which was included in the library district, and placed in the respective county general expense fund. If, after the application of the tax monies and sale proceeds, indebtedness remains, the board of county commissioners of the home county shall provide for the payment of the remaining indebtedness from special levies certified to each county in proportion to the assessed valuation of each which was included in the district. The tax shall be collected by each county and remitted to the home county for payment of the remaining indebtedness.

**History.**

1963, ch. 188, § 20, p. 568; am. 1980, ch. 187, § 1, p. 414; am. 1981, ch. 305, § 1, p. 627; am. 1986, ch. 21, § 1, p. 62; am. and redesisg. 1989, ch. 132, § 8, p. 286; am. 1996, ch. 71, § 14, p. 216.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2720.

Former § 33-2713 was amended and redesignated as § 33-2721 by § 16 of S.L. 1989, ch. 132.

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 1980, ch. 187 declared an emergency. Approved March 27, 1980.

Section 2 of S.L. 1986, ch. 21 declared an emergency. Approved February 28, 1986.



• Title 33 », « Ch. 27 », « 33-2713A. »

Idaho Code 33-2713A

**33-2713A. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section was amended and redesignated as § 33-2725 by § 20 of S.L. 1989, ch. 132.

**33-2714. Library districts — Public corporations.** — Each library district shall be a public corporation, may sue and be sued in its corporate name and may contract and be contracted with.

**History.**

1963, ch. 188, § 17, p. 568; am. and redesign. 1989, ch. 132, § 9, p. 286.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2717.

Former § 33-2714 was amended and redesignated as § 33-2724 by § 19 of S.L. 1989, ch. 132.

**33-2715. Board of trustees — Selection — Number — Qualifications — Term — Oath — Appointment of first board.** — (1) Each library district shall be governed by a board of trustees of five (5) members elected or appointed as provided by law, who at the time of their selection and during their terms of office shall be qualified electors of the district and if trustee zones have been established under section 33-2718, Idaho Code, shall be a resident of the trustee zone. Trustees shall be elected at each trustee election, held on the uniform election date in May. The regular term of a trustee shall be for six (6) years, or until his successor has been elected and qualified. Within ten (10) days after his appointment an appointed trustee shall qualify and assume the duties of his office. An elected trustee shall qualify and assume the duties of his office at the annual meeting. All trustees qualify by taking the oath of office required of state officers, to be administered by one (1) of the present trustees or by a trustee retiring.

(2) Following the initial establishment of a library district, the board of county commissioners of the home county within five (5) days shall appoint the members of the first board of trustees, who shall serve until the next election of trustees held in an odd-numbered year or until their successors are elected and qualified in an odd-numbered year. The initial election of trustees shall be for terms of four (4) years for two (2) trustees and thereafter their terms shall be for six (6) years, terms of six (6) years for two (2) trustees and thereafter their terms shall be for six (6) years, and a term of two (2) years for one (1) trustee and thereafter the term shall be for six (6) years. Addition of new territory to an existing library district shall not be considered an initial establishment. The first board of trustees shall be sworn by a member of the board of county commissioners of the home county of the district.

(3) At its first meeting, and after each trustee election, the board shall organize and elect from its membership a chairman and other officers necessary to conduct the affairs of the district.

(4) Members of the board shall serve without salary but shall receive their actual and necessary expenses while engaged in business of the district.

(5) For the purpose of achieving an orderly transition to terms of six (6) years and to hold trustee elections in odd-numbered years, the following schedule shall be followed:

(a) For trustees elected in 2005, their terms shall expire in 2011 and the terms for each of those elected in 2011 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(b) For trustees elected in 2006, their terms shall expire in 2011 and the terms for each of those elected in 2011 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(c) For trustees elected in 2007, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(d) For trustees elected in 2008, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(e) For trustees elected in 2009, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(f) For trustees elected in 2010, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall be six (6) years and thereafter those terms shall be for six (6) years.

### **History.**

1963, ch. 188, § 9, p. 568; am. 1983, ch. 107, § 1, p. 226; am. and redesisg. 1989, ch. 132, § 10, p. 286; am. 1996, ch. 71, § 15, p. 216; am. 2002, ch. 312, § 3, p. 886; am. 2009, ch. 341, § 52, p. 993; am. 2010, ch. 185, § 4, p. 382.

## **STATUTORY NOTES**

### **Cross References.**

Oath of office, § 59-401 et seq.

### **Amendments.**

The 2009 amendment, by ch. 341, added the subsection (1) designation, and therein, in the second sentence, substituted “Trustees” for “One (1) trustee” and deleted “annual” preceding “trustee election,” and, in the third sentence, substituted “six (6) years” for “five (5) years”; added the subsection (2) designation, and therein, in the first sentence, deleted “annual” preceding “election of trustees,” inserted “held in an odd-numbered year,” and added “in an odd-numbered year” and rewrote the second sentence, which formerly read: “The initial election of trustees shall be for terms of one (1), two (2), three (3), four (4) and five (5) years respectively”; and added the subsection (3) and (4) designations and subsection (5).

The 2010 amendment, by ch. 185, added paragraph (5)(f).

### **Compiler’s Notes.**

This section was formerly compiled as § 33-2709.

Former § 33-2715 was amended and redesignated as § 33-2722 by § 17 of S.L. 1989, ch. 132.

### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**33-2716. Board of trustees — Nomination and election — Recall — Vacancies.** — (1) The procedure for nomination and election of trustees of a library district shall be as provided for in chapter 14, title 34, Idaho Code, and in the general election laws of Idaho. If any two (2) or more candidates for the same trustee position have an equal number of votes, the board of trustees shall determine the winner by a toss of a coin.

(2) Each library district trustee shall be subject to recall following procedures as provided in chapter 17, title 34, Idaho Code.

Individuals signing a petition to recall a library trustee or voting in an election to recall a library trustee shall meet the requirements of [section 33-2702, Idaho Code](#).

To recall any trustee, a majority of the votes cast at the recall election must be in favor of the recall, and additionally, the number of votes cast in the recall election must equal or exceed the number of votes cast in the last trustee election held in the library district.

(3) A vacancy shall be declared by the board of trustees when any nominee has been elected but has failed to qualify for office, or within thirty (30) days of when any trustees shall (a) die; (b) resign from office; (c) no longer reside in his respective trustee zone of residence; (d) no longer be a resident or qualified elector of the public library district; (e) refuse to serve as trustee; (f) without excuse acceptable to the board of trustees, fail to attend two (2) consecutive regular meetings of the board; or (g) be recalled and discharged from office as provided in this chapter.

A declaration of vacancy shall be made at any regular or special meeting of the board of trustees, at which any of the above-mentioned conditions is determined to exist.

The board of trustees shall appoint to fill the vacancy, a person qualified to serve as trustee of the public library district, provided there remains in membership on the board of trustees a majority of the membership thereof, and the board shall notify the board of library commissioners of the appointment. This appointment shall be made within sixty (60) days of the declaration of vacancy. In the event that the board of trustees fails to

exercise their authority, appointments shall be made by the board of county commissioners of the home county in which the district is located within thirty (30) days after the expiration of the sixty (60) days allowed for trustees for this action.

Any person appointed as provided in this chapter shall serve until the next election of public library district trustees following the appointment. At the election a trustee shall be elected to complete the unexpired term of the office which was declared vacant filled by appointment.

The elected trustee shall assume office at the first annual meeting of the public library district following the election.

### **History.**

**I.C., § 33-2710**, as added by 1980, ch. 231, § 2, p. 512; am. and redesign. 1989, ch. 132, § 11, p. 286; am. 1993, ch. 303, § 3, p. 1124; am. 1995, ch. 119, § 9, p. 513; am. 1996, ch. 71, § 16, p. 216; am. 2006, ch. 235, § 25, p. 701; am. 2009, ch. 341, § 53, p. 993; am. 2012, ch. 148, § 1, p. 418.

## **STATUTORY NOTES**

### **Cross References.**

Board of library commissioners, § 33-2502.

General election laws, title 34, Idaho Code.

### **Prior Laws.**

Another former § 33-2710 (S.L. 1963, ch. 188, § 10, p. 568) was repealed by S.L. 1980, ch. 231, § 1.

### **Amendments.**

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” in the third paragraph of subsection (3).

The 2009 amendment, by ch. 341, in the fourth paragraph in subsection (3), twice deleted “annual” preceding “election.”

The 2012 amendment, by ch. 148, in subsection (2), deleted “Notwithstanding the limitations of chapter 17, title 34, Idaho Code” from

the beginning and substituted “as provided in” for “as closely as possible to the procedures described for the recall of county commissioners pursuant to” near the end of the first paragraph and deleted “If, pursuant to [section 33-2717, Idaho Code](#), no election was held for the trustee being recalled: (a) The number of district electors required to sign the petition seeking a recall election must be not less than fifty (50), or twenty percent (20%) of the number of votes cast in the last trustee election held in the library district, whichever is the greater” and deleted the designation (b) from the last paragraph of subsection (2).

**Compiler’s Notes.**

This section was formerly compiled as § 33-2710.

Former § 33-2716 was redesignated as § 33-2723 by § 18 of S.L. 1989, ch. 132.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**33-2717. Board of trustees — One nomination — No election.** — In any election for the office of trustee it is not necessary to conduct an election if:

(1) After the expiration of the date for filing written nominations only one (1) candidate has been nominated for each position to be filled; and, there has been no declaration of intent to be a write-in candidate filed as provided in [section 33-2717A, Idaho Code](#); or (2) If no candidate has filed a written nomination and only one (1) candidate for each position to be filled has filed a declaration of intent to be a write-in candidate as provided in [section 33-2717A, Idaho Code](#). If either of these conditions are present, the board of trustees shall no later than seven (7) days before the scheduled date of the election declare the candidate elected as trustee, and the clerk of the library board shall immediately make and deliver to this person a certificate of election. The clerk of the library board shall also notify the clerk of the county commissioners of the home county and the commission for libraries. The procedure set forth in this section shall not apply to any other library district election.

### **History.**

[I.C., § 33-2710A](#), as added by 1980, ch. 232, § 1, p. 512; am. and redesign. 1989, ch. 132, § 12, p. 286; am. 1992, ch. 4, § 1, p. 9; am. 1995, ch. 119, § 10, p. 513; am. 1996, ch. 71, § 17, p. 216; am. 2006, ch. 235, § 26, p. 701.

## **STATUTORY NOTES**

### **Cross References.**

Commission for libraries, § 33-2501.

### **Amendments.**

The 2006 amendment, by ch. 235, substituted “commission of libraries” for “state library” in subsection (2).

### **Compiler’s Notes.**

This section was formerly compiled as § 33-2710A.

Former § 33-2717 was amended and redesignated as § 33-2714 by § 9 of S.L. 1989, ch. 132.

**33-2717A. Declaration of intent for write-in candidate.** — No write-in vote for library district trustee in a library district election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of library trustee if elected. The declaration of intent shall be filed with the clerk of the library board not later than forty-five (45) days before the day of election.

**History.**

I.C., § 33-2717A, as added by 1992, ch. 4, § 2, p. 9; am. 1996, ch. 71, § 18, p. 216; am. 2013, ch. 135, § 2, p. 307.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 135, substituted “forty-five (45) days” for “twenty-five (25) days” in the last sentence.

**Effective Dates.**

Section 3 of S.L. 1992, ch. 4 declared an emergency. Approved February 19, 1992.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

**33-2717B. Withdrawal of candidacy. [Repealed.]**

Repealed by S.L. 2011, ch. 11, § 7, effective January 1, 2011.

**History.**

I.C., § 33-2717B, as added by 1996, ch. 71, § 19, p. 216.

**33-2717C. Procedure for correction of ballots. [Repealed.]**

Repealed by S.L. 2011, ch. 11, § 7, effective January 1, 2011.

**History.**

I.C., § 33-2717C, as added by 1996, ch. 71, § 20, p. 216.

**33-2718. Creation of trustee zones.** — (1) Each library district may be divided into five (5) trustee zones with each zone having approximately the same population. To the maximum extent possible, boundaries of trustee zones shall follow the existing boundaries of the electoral precincts of the county. They shall be revised, as necessary, to equalize population and to follow new electoral precinct boundaries following the publication of the report of each decennial census. In order for a library district to be divided into trustee zones, the board of trustees shall pass a motion declaring the district to be divided into trustee zones and providing a legal description of each trustee zone. The board of trustees shall transmit the motion along with the legal description of the trustee zones to the board or boards of county commissioners in the county or counties where the library district is contained and to the board of library commissioners. The board or boards of county commissioners shall have forty-five (45) days from the receipt of the motion and legal description to reject, by adoption of a motion, the establishment of trustee zones proposed by formal motion of the board of trustees of the library district. If the board or boards of county commissioners do not reject the establishment of the trustee zones within the time limit specified, they shall be deemed to be in full force and effect. If a library district is contained in more than one (1) county, a motion of rejection adopted by one (1) board of county commissioners shall be sufficient to keep the trustee zone plan from going into effect. A board of county commissioners shall notify the library board of trustees in writing if a proposal is rejected.

(2) If a proposal for the establishment of trustee zones is rejected by a board of county commissioners, the boundaries of the trustee zones, if any, shall return to the dimensions they were before the rejection. Trustee zones may be redefined and changed, but not more than once every two (2) years after a new set of trustee zones are formally established and in full force and effect.

(3) At the next regular meeting of the board of trustees of the library district following the creation of trustee zones, the public library district board shall appoint from its membership or from other qualified electors resident in each trustee zone, a person from that zone to serve as a trustee

until the next regularly scheduled trustee election from that zone, which election shall be held in an odd-numbered year. The initial election of trustees for the trustee zones shall be for terms of four (4) years for two (2) trustees and thereafter their terms shall be for six (6) years, terms of six (6) years for two (2) trustees and thereafter their terms shall be for six (6) years, and a term of two (2) years for one (1) trustee and thereafter the term shall be for six (6) years, with each zone being assigned an initial term length by a random drawing of the numbers one (1) through five (5).

(4) For the purpose of achieving an orderly transition to terms of six (6) years and hold trustee elections in odd-numbered years, the following schedule shall be followed:

(a) For trustees elected in 2005, their terms shall expire in 2011 and the terms for each of those elected in 2011 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(b) For trustees elected in 2006, their terms shall expire in 2011 and the terms for each of those elected in 2011 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(c) For trustees elected in 2007, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(d) For trustees elected in 2008, their terms shall expire in 2013 and the terms for each of those elected in 2013 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(e) For trustees elected in 2009, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall each be six (6) years and thereafter those terms shall be for six (6) years;

(f) For trustees elected in 2010, their terms shall expire in 2015 and the terms for each of those elected in 2015 shall be six (6) years and thereafter those terms shall be for six (6) years.

### **History.**

I.C., § 33-2710B, as added by 1983, ch. 107, § 2, p. 226; am. and redesign. 1989, ch. 132, § 13, p. 286; am. 1996, ch. 71, § 21, p. 216; am. 2002, ch.

312, § 4, p. 886; am. 2006, ch. 235, § 27, p. 701; am. 2009, ch. 341, § 54, p. 993; am. 2010, ch. 185, § 5, p. 382.

## **STATUTORY NOTES**

### **Cross References.**

Board of library commissioners, § 33-2502.

### **Amendments.**

The 2006 amendment, by ch. 235, substituted “board of library commissioners” for “state library board” in the middle of the introductory paragraph.

The 2009 amendment, by ch. 341, added the subsection (1) through (3) designations, rewriting subsection (3) to the extent that a detailed comparison is impracticable; and added subsection (4).

The 2010 amendment, by ch. 185, added paragraph (4)(f).

### **Compiler’s Notes.**

This section was formerly compiled as § 33-2710B.

Former § 33-2718 was amended and redesignated as § 33-2726 by § 21 of S.L. 1989, ch. 132.

### **Effective Dates.**

Section 3 of S.L. 1983, ch. 107 declared an emergency. Approved March 29, 1983.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**33-2719. Board of trustees — Meetings.** — The annual meeting of a library district board shall be on the date of its first regular meeting in June. The purposes of the annual meeting are to elect the officers of the board, to establish a regular meeting date, and to review, amend, repeal or adopt bylaws, policies and procedures. The oath of office shall be administered to the newly elected or re-elected trustee or trustees on the first regular meeting following each trustee election. The regular meetings of the board of trustees of an administrative only district shall be held at least once in each quarter. All other library district boards shall meet at least once every two (2) months at a uniform day of the month as the board of trustees shall determine at its annual meeting. Special or adjourned meetings may be held from time to time as the board may determine, but written notice thereof shall be given to the members at least two (2) days prior to the day of the meeting. A quorum shall consist of three (3) members, but a smaller number may adjourn. All meetings shall be held under the provisions of chapter 2, title 74, Idaho Code. It is the duty of each trustee to attend all meetings of the board of trustees.

### **History.**

1963, ch. 188, § 11, p. 568; am. and redesign. 1989, ch. 132, § 14, p. 286; am. 1996, ch. 71, § 22, p. 216; am. 2002, ch. 312, § 5, p. 886; am. 2015, ch. 141, § 68, p. 379; am. 2015, ch. 283, § 1, p. 1150.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 141, substituted “chapter 2, title 74” for “section 7-2340 through 67-2347” in the next-to-last sentence.

The 2015 amendment, by ch. 283, substituted “in June” for “following each trustee election” at the end of the first sentence; deleted “to administer the oath of office to the newly elected or re-elected trustee or trustees”

following “annual meeting” in the second sentence; and added the third sentence.

**Compiler’s Notes.**

This section was formerly compiled as § 33-2711.

Former § 33-2719 was amended and redesignated as § 33-2727 by § 22 of S.L. 1989, ch. 132.

**33-2720. Powers and duties of the board of trustees.** — (1) The board of trustees of each library district shall have the following powers and duties consistent with the laws of the state of Idaho:

- (a) To establish bylaws for its own government;
- (b) To establish policies for the administration, operation and use of the library or libraries under its control; (c) To employ and evaluate a library director or library director team to administer the library; (d) To create job descriptions, personnel policies, and compensation packages for library personnel; (e) To establish an annual budget and to oversee the financial management of the library district; (f) To establish and locate libraries, branch libraries or stations to serve the district and to provide suitable rooms, structures, facilities, furniture, apparatus and appliances necessary for the conduct thereof; (g) To acquire by purchase, devise, lease, or otherwise, and to own and hold real and personal property and to construct buildings for the use and purposes of the library district, and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the district, and to insure the real and personal property of the district; (h) To accept gifts of real or personal property for the use and purposes of the library district; (i) To establish policies for the purchase and distribution of library materials; (j) To issue warrants, if used, in the manner specified for the issuance of warrants by school districts; (k) To invest any funds of the district in accordance with the public depository law and other applicable state and federal laws; (l) To pay actual and necessary expenses of members of the library staff when on business of the district; (m) To see to the proper conduct of library district elections; (n) To maintain legal records of all board business;
- (o) To exercise other powers, not inconsistent with law, necessary for the effective use and management of the library.

(2) Individual trustees shall have no authority to make decisions about the policies of the library except as specifically authorized by the board.

(3) It shall be the duty of each trustee to attend all board meetings and committee meetings for committees to which he or she has been assigned.

**History.**

1963, ch. 188, § 12, p. 568; am. 1965, ch. 255, § 3, p. 648; am. and redesign. 1989, ch. 132, § 15, p. 286; am. 1996, ch. 71, § 23, p. 216; am. 2002, ch. 312, § 6, p. 886.

**STATUTORY NOTES****Cross References.**

Investment of sinking fund, § 57-601.

Public depository law, § 57-101 et seq.

**Compiler's Notes.**

This section was formerly compiled as § 33-2712.

Former § 33-2720 was amended and redesignated as § 33-2713 by § 8 of S.L. 1989, ch. 132.

**33-2721. Library director — Director team — Employees. —** (1) Except for an administrative only district, the board of trustees of each library district shall appoint a library director or director team who shall administer the library district. The director or one (1) member of the director team assigned by the board shall serve as the secretary for the board without voting rights. The library director or director team shall advise the board, implement policy set by the board, and shall acquire library materials, equipment and supplies. The director or director team shall attend all executive sessions of the board of trustees, except those called to consider the evaluation, dismissal, or disciplining, or to hear complaints or charges against the library director or director team member. No library director or director team member shall be an employee or board member of a library or other agency with which the district has a contract to provide library services.

(2) The board shall fix and pay employee salaries and compensation, classify employees, adopt personnel policies, and discipline or discharge any library director or director team member for cause. The library director or director team shall hire or oversee the hiring of all other employees based on the policies, procedures, and job descriptions created by the library board, and shall discipline and discharge any employee for cause, as necessary, according to the written policies of the board.

**History.**

1963, ch. 188, § 13, p. 568; am. and redesign. 1989, ch. 132, § 16, p. 286; am. 1996, ch. 71, § 24, p. 216; am. 2002, ch. 312, § 7, p. 886.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-2721, which comprised 1963, ch. 188, § 21, p. 568, was repealed by S.L. 1989, ch. 132, § 23.

**Compiler's Notes.**

This section was formerly compiled as § 33-2713.

**33-2722. Treasurer — Clerk.** — The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as treasurer of the library district. This person shall, on taking office, give bond to the library district, with sureties approved by the board of trustees, in the amount of at least five thousand dollars (\$5,000), which bond shall be paid for by the district and shall be conditioned upon faithful performance of the duties of his office and his accounting for all moneys of the library district received by him or under his control. The treasurer shall supervise all moneys raised for the library district by taxation or received by the district from any other sources and shall supervise all disbursements of funds of the district by order of the board of trustees.

Under the direction of the board of trustees, the treasurer shall have all moneys of the district deposited in accordance with the public depository law and other applicable state and federal laws.

The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as clerk of the library board. The clerk shall prepare and distribute legal notices and shall have other duties as the board may prescribe.

### **History.**

1963, ch. 188, § 15, p. 568; am. and redesign. 1989, ch. 132, § 17, p. 286; am. 1996, ch. 71, § 25, p. 216; am. 2002, ch. 312, § 8, p. 886; am. 2011, ch. 11, § 9, p. 24.

## **STATUTORY NOTES**

### **Cross References.**

Public depository law, § 57-101 et seq.

### **Prior Laws.**

Former § 33-2722 was amended and redesignated as § 33-2709 by § 4 of S.L. 1989, ch. 132 and was subsequently repealed by § 7 of S.L. 1990, ch. 378.

**Amendments.**

The 2011 amendment, by ch. 11, deleted “conduct library district elections, other than for excision, annexation, consolidation, or division; shall” following “the clerk shall” in the second sentence in the last paragraph.

**Compiler’s Notes.**

This section was formerly compiled as § 33-2715.

**Effective Dates.**

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

**33-2722A — 33-2722C. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections were amended and redesignated as §§ 33-2710 to 33-2712 by §§ 5 to 7 of S.L. 1989, ch. 132; however, § 33-2722A, redesignated as § 33-2710 by § 5 of S.L. 1989, ch. 132 was subsequently repealed by § 7 of S.L. 1990, ch. 378.



**33-2723. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section was amended and redesignated as § 33-2507, pursuant to S.L. 2002, ch. 312, § 9.

**33-2724. Taxes for the support of library district — Tax anticipation loans — Carry over authority — Capital assets replacement and repair fund.** — (1) Any tax levied for library district purposes shall be a lien upon the property against which the tax is levied. The board of trustees shall determine and levy a tax upon each dollar of assessed valuation of property within the district for the ensuing fiscal year as shall be required to satisfy all maturing bond, bond interest, and judgment obligations. For the maintenance and operation of the library district, the board of trustees may also levy upon the taxable property within the district a tax not to exceed six hundredths percent (.06%) of market value for assessment purposes. These levies shall be certified to the board of county commissioners of each county in which the district may lie, not later than the second Monday in September of each year.

(2) In the first year after establishment, the board of a district may, for the purpose of organization and to finance general preliminary expenses of the district and before making a tax levy, incur an indebtedness not exceeding in the aggregate a sum equal to six hundredths percent (.06%) on each one dollar (\$1.00) of market value for assessment purposes of all taxable property within the district. To repay the organization indebtedness incurred, the board shall have authority to levy and collect an additional tax not to exceed two hundredths percent (.02%) per annum on each one dollar (\$1.00) of market value for assessment purposes of all taxable property within the district. This additional levy shall not be used for any purpose other than repayment of the organizational indebtedness and interest thereon. This additional levy may be imposed for three (3) years.

(3) Library districts may accumulate fund balances at the end of a fiscal year and carry over these fund balances into the ensuing fiscal year, sufficient to achieve or maintain library district operations on a cash basis. A fund balance is the excess of the assets of a fund over its liabilities and reserves.

(4) The board of trustees of a library district may establish a capital assets replacement and repair fund within the library district budget for which district moneys may be budgeted and carried over from year to year.

Disbursements from the fund may be made as the board may determine to maintain, repair, or replace the capital assets of the district to remodel or repair any existing library building; to furnish and equip any existing library building; and to purchase or replace major appliances and vehicles necessary to maintain and operate the services of the district. Moneys from the capital assets replacement and repair fund may not be used for the purchase of land or to build new library facilities or to build additions to current library facilities. Moneys in the fund may be invested in the manner provided in [section 57-127, Idaho Code](#). In any year in which there is a capital assets replacement and repair fund in a library district, the amount held in the fund shall be reported in the library district's budget hearing announcement, along with a list of capital items which may eventually be replaced or repaired with moneys from the fund. The fund shall be included in the annual report filed with the board of library commissioners and in the audit required in [section 33-2726, Idaho Code](#).

### **History.**

1963, ch. 188, § 14, p. 568; am. 1965, ch. 255, § 6, p. 648; am. 1974, ch. 141, § 1, p. 1355; am. and redesign. 1989, ch. 132, § 19, p. 286; am. 1990, ch. 378, § 10, p. 1046; am. 1995, ch. 119, § 11, p. 513; am. 1996, ch. 71, § 26, p. 216; am. 2002, ch. 155, § 1, p. 450; am. 2006, ch. 235, § 28, p. 701.

## **STATUTORY NOTES**

### **Cross References.**

Board of library commissioners, § 33-2502.

### **Amendments.**

The 2006 amendment, by ch. 235, substituted "board of library commissioners" for "state library board" in subsection (4).

### **Compiler's Notes.**

This section was formerly compiled as § 33-2714.

### **Effective Dates.**

Section 7 of S.L. 1965, ch. 255 declared an emergency. Approved March 29, 1965.

**33-2725. Library district budget — Public hearing — Notice — Adjustments.** — The board of trustees of each library district shall prepare for the ensuing fiscal year a budget and prior to its adoption shall have called and caused to be held a public hearing thereon at a regular or special meeting. Notice of the time and place of the hearing shall be published at least once in a newspaper printed, or having general circulation within the district or in the county or counties in which the library district may lie. The board of trustees of each library district shall also prepare and publish, as a part of this notice, a summary statement of the budget for the ensuing year prepared in a manner consistent with standard accounting practices and indicating amounts previously budgeted for the then current year for purposes of comparison.

During the year the board of trustees may proceed to adjust the budget as adopted to reflect the receipt of unanticipated revenue, grants, or donations from federal, state or local government or private sources, provided that there shall be no increase in the property tax portion of the annual certified budget. Prior to the adoption of the budget adjustment, the library board shall have called and cause to be held a public hearing thereon at a regular or special meeting. Notice of the time and place of the hearing shall be published at least once in a newspaper printed or having general circulation within the district or in the county or counties in which the library district may lie. The board of trustees of each library district shall also prepare and publish, as a part of this notice, a summary of the budget and the adjustments prepared in a manner consistent with standard accounting practices and indicating amounts previously budgeted for the then current year for purposes of comparison.

### **History.**

I.C., § 33-2713A, as added by 1982, ch. 177, § 1, p. 465; am. and redesign. 1989, ch. 132, § 20, p. 286; am. 1996, ch. 71, § 27, p. 216; am. 2002, ch. 312, § 10, p. 886.

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section was formerly compiled as § 33-2713A.

**33-2726. Fiscal year — Annual reports — Audit.** — The fiscal year of each library district shall commence on the first day of October of each year. The board of trustees of each library district shall annually, not later than the first day of January, file with the board of library commissioners a report of the operations of the district for the fiscal year just ended. The report shall be on the form and contain the information that the board of library commissioners requires, but in all cases must include a complete accounting of all financial transactions for the fiscal year being reported.

The board of trustees of each library district shall cause to be made a full and complete audit of the books and accounts of the district as required in [section 67-450B, Idaho Code](#).

### **History.**

1963, ch. 188, § 18, p. 568; am. 1982, ch. 52, § 1, p. 80; am. and redesign. 1989, ch. 132, § 21, p. 286; am. 1993, ch. 327, § 17, p. 1186; am. 1993, ch. 387, § 7, p. 1417; am. 1996, ch. 71, § 28, p. 216; am. 2006, ch. 235, § 29, p. 701.

## **STATUTORY NOTES**

### **Cross References.**

Board of library commissioners, § 33-2502.

Library district budget, § 33-2725.

### **Amendments.**

The 2006 amendment, by ch. 235, twice substituted “board of library commissioners” for “state library board” in the introductory paragraph.

### **Compiler’s Notes.**

This section was formerly compiled as § 33-2718.

**33-2727. Contracts — Joint powers agreements — Participation in nonprofit corporations.** — (1) In lieu of, or in addition to, establishing an independent library, the board of trustees may purchase specified library services by contract from any taxing unit, or public or private agency maintaining a library. Contracts for services shall contain provisions on annual budget procedures, accounting for funds, dispute resolution procedures, ownership of assets purchased with district funds, annual reports and procedures for ending the contract.

(2) The board of trustees of a library district may sell specified library services to any taxing unit, or public or private agency which contracts to make an acceptable annual appropriation for these services.

(3) Any purchase or sale of library services shall be under a written contract that is in accordance with all applicable state and federal laws.

(4) In order to improve or expand public library services, library districts may participate in the joint exercise of powers with other public agencies as specified by law.

(5) In order to improve or expand public library services, library districts may become corporate partners in nonprofit corporations.

**History.**

1963, ch. 188, § 19, p. 568; am. 1965, ch. 255, § 4, p. 648; am. and redesisg. 1989, ch. 132, § 22, p. 286; am. 1996, ch. 71, § 29, p. 216; am. 2002, ch. 312, § 11, p. 886.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-2719.

**33-2728. Bond election.** — (1) The purposes for which bonds may be issued shall be: To acquire, purchase, or improve a library site or sites; to build a library or libraries, or other building or buildings; to demolish or remove buildings; to add to, remodel or repair any existing building; to furnish and equip any building or buildings, including all facilities and appliances necessary to maintain and operate the buildings of the library; and to purchase motor vehicles for use as bookmobiles.

The library district may issue bonds in an amount not to exceed one percent (1%) of the market value for assessment purposes of property within the district, less any aggregate outstanding indebtedness.

The board of trustees of any library district, upon approval of a majority thereof, may call a bond election on the question as to whether the board shall be empowered to issue bonds of the district in an amount and for a period of time to be stated in the notice of election. The notice of bond elections, the qualification of bond electors, the conduct of the election, and the canvass of election and determination of the result of election shall be in accordance with chapter 14, title 34, Idaho Code, and with the general election laws of the state of Idaho. Provided however, that any such election conducted pursuant to this section shall be held on election day in the month of May or November as provided for in [section 34-106\(1\), Idaho Code](#). The majority required to pass a bond issue shall be two-thirds (2/3) of those voting in the election. The issuance of bonds, the expenditure of bond proceeds and the repayment of the bonds shall all be as specified in school district law.

(2) District library bond funds may not be used to purchase or expand a building for a contracting agency providing library services unless the district library gains an ownership share in the building proportional to the percentage of district bond funds used to purchase or expand the building.

### **History.**

[I.C., § 33-2723](#), as added by 1965, ch. 255, § 5, p. 648; am. 1980, ch. 350, § 16, p. 887; am. and redesign. 1989, ch. 132, § 24, p. 286; am. 1993,



ch. 303, § 4, p. 1124; am. 2002, ch. 155, § 2, p. 450; am. 2009, ch. 132, § 1, p. 413.

## **STATUTORY NOTES**

### **Cross References.**

General election laws, title 34, Idaho Code.

### **Amendments.**

The 2009 amendment, by ch. 132, in subsection (1), in the second paragraph, substituted “one percent (1%)” for “four-tenths percent (.4%)” and added the third sentence in the third paragraph.

### **Compiler’s Notes.**

This section was formerly compiled as § 33-2723.

**33-2729. Plant facilities reserve fund and levy.** — The library district board of trustees is authorized to create a plant facilities reserve fund as set forth in sections 33-804 and 33-901, Idaho Code.

District library facilities plant facilities reserve funds may not be used to purchase or expand a building for a contracting agency providing library services unless the district library gains an ownership share in the building proportional to the percentage of district bond funds used to purchase or expand the building.

**History.**

I.C., § 33-2729, as added by 1991, ch. 35, § 1, p. 71; am. 2002, ch. 155, § 3, p. 450.

## **33-2730 — 33-2736. [Reserved.]**

**33-2737. School-community library districts.** — (a) The board of trustees of any school district in which is situated no incorporated city having a population in excess of one thousand (1,000), and in which no public library is maintained under any other provision of law, shall, upon petition of twenty (20) or more school district electors, submit to the school district electors of the district the question whether there shall be a public library established by the district for the benefit of the citizens thereof.

(b) The election on the question shall be held at the same time as the election of school district trustees, next following the filing of the petition, and notice shall be given, the election conducted, and the returns canvassed, as provided in chapter 4, title 33, Idaho Code.

(c) If a majority of the school district electors voting in the election vote in favor of the question a school-community library district shall be established.

(d) No new school-community library shall be established after June 30, 1994.

### **History.**

1963, ch. 13, § 96, p. 27; am. 1975, ch. 105, § 1, p. 215; am. and redesign. 1992, ch. 275, § 1, p. 848; am. 1996, ch. 71, § 30, p. 216.

## **STATUTORY NOTES**

### **Cross References.**

Adding area to established library district, § 33-2708.

School librarian, certificate required, § 33-1201.

### **Compiler's Notes.**

This section was deemed to supersede a section formerly compiled as § 33-2602 (1901, p. 3, § 2; am. R.C., § 676; am. 1911, ch. 159, § 178, p. 551;

reen. C.L. 38:292; C.S., § 1036; I.C.A., § 32-2102; am. 1943, ch. 170, § 1, p. 358; am. 1955, ch. 129, § 1, p. 266.) This section was formerly compiled as § 33-2601.

**33-2738. School-community library districts — Board of trustees — Trustee zones.** — Each school-community library district shall be governed by a board of trustees of five (5) members, who at the time of their selection and during their terms of office shall be qualified electors of the district.

(1) Four (4) of the trustees shall be elected. The procedure for nomination and election of trustees shall be as provided for the nomination and election of trustees of a library district pursuant to this chapter. Each school-community public library district may be divided into four (4) trustee zones with each zone having approximately the same population. In order for a school-community public library district to be divided into trustee zones, the board of trustees shall pass a motion declaring the district to be divided into trustee zones and present a description of boundaries of each trustee zone. The board of trustees shall transmit the motion along with the boundaries of the trustee zones to the board or boards of county commissioners in the county or counties where the school-community public library district is contained. The board or boards of county commissioners shall have forty-five (45) days from the receipt of the motion and description to reject, by adoption of a motion, the establishment of trustee zones proposed by formal motion of the board of trustees of the school-community public library district. If the board or boards of county commissioners do not reject the establishment of the trustee zones within the time limit specified, the zones shall be deemed to be in full force and effect upon the next annual trustee election. If a school-community public library district is contained in more than one (1) county, a motion of rejection adopted by one (1) board of county commissioners shall be sufficient to keep the trustee zone plan from going into effect. A board of county commissioners shall notify the board of trustees in writing if a proposal is rejected.

If a proposal for the establishment of trustee zones is rejected by a board of county commissioners, the boundaries of the trustee zones, if any, shall return to the dimensions they were before the rejection. Trustee zones may be redefined and changed, but not more than once every two (2) years, after a new set of trustee zones are formally established and in full force and effect.

All other matters relating to school-community library public district trustee zones shall be as provided in chapters 4 and 5, title 33, Idaho Code, relating to school district trustee zones.

(2) The fifth trustee of the school-community library district board shall be a member of the school district board and shall be appointed by the school district board from its members at the annual meeting of the school district board. In the case of division of the district into four (4) elected school-community public library trustee zones, this fifth trustee shall serve as a trustee member-at-large.

(3) The initial board, except for the fifth trustee who shall be appointed by the school board, shall be appointed by the board of county commissioners, and shall serve until the next annual election of trustees or until their successors are appointed and qualified.

**History.**

I.C., § 33-2738, as added by 1992, ch. 275, § 2, p. 848; am. 1996, ch. 71, § 31, p. 216.

**33-2739. School-community library districts — Board of trustees — Powers and duties — Fiscal year.** — (1) The board of trustees of the school-community library district shall perform the duties required of, and have the power and authority granted to library district trustees pursuant to this chapter, including the authority to levy upon the taxable property in the school-community library district an annual tax not to exceed six hundredths percent (.06%) of market value for assessment purposes for establishing and maintaining public library services. The school-community library district board shall have exclusive control of the school-community library district fund and shall cause to be made a full and complete audit of the books and accounts of the district as provided for in section 33-2726, Idaho Code.

(2) On and after fiscal year 1995, school-community library districts shall have a fiscal year of October 1 through September 30.

**History.**

**I.C., § 33-2739**, as added by 1992, ch. 275, § 2, p. 848; am. 1993, ch. 316, § 1, p. 1171; am. 2009, ch. 11, § 8, p. 14.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 11, deleted former subsection (2), which contained obsolete language concerning levies, and redesignated former subsection (3) as present subsection (2).

**Effective Dates.**

Section 2 of S.L. 1993, ch. 316 declared an emergency. Approved March 31, 1993.

**33-2740. School-community library districts — Consolidation — Reorganization into library districts.** — School-community library districts may join existing library districts according to the procedures set forth in section 33-2711, Idaho Code.

School-community library districts may reorganize into a library district as follows. The board of trustees of the school-community library district shall present a resolution calling for reorganization to the board of county commissioners who shall follow the procedures in subsections (2) through (5) of [section 33-2704, Idaho Code](#), except that no precedent petition shall be necessary. After the required hearing, the board of county commissioners shall appoint the first board of library district trustees and thereafter trustees shall be elected as provided in [section 33-2715, Idaho Code](#). The school-community library district's dollar amount of the budget from ad valorem taxes shall be transferred without interruption to the new library district and shall be the base of the ad valorem portion of the new district's budget.

The dispersement of the assets and liabilities of the school-community library district shall be the responsibility of the school-community library district board of trustees should the library consolidate with a library district, organize into a library district, or dissolve.

### **History.**

[I.C., § 33-2740](#), as added by 1992, ch. 275, § 2, p. 848; am. 1996, ch. 71, § 32, p. 216.

## **OPINIONS OF ATTORNEY GENERAL**

### **Legislative Intent.**

The intent of the legislature in enacting §§ 33-2737 to 33-2740 was to provide that the four school-community libraries that existed on June 30, 1992, became school-community library districts with continuous taxing authority on July 1, 1992, and without the need for the patrons of those school districts to determine anew that issue by election. OAG 92-4.



**33-2741. Public library — Internet use policy required.** — (1) Public libraries receiving public moneys and governed by the provisions of chapters 26 and 27, title 33, Idaho Code, that offer use of the internet or an online service to the public:

(a)(i) Shall have in place a policy of internet safety for minors including the operation of a technology protection measure with respect to any publicly accessible wireless internet access or publicly accessible computers with internet access and that protects against access through such computers or wireless internet access to visual depictions that are obscene or child pornography or harmful to minors; and

(ii) Shall enforce the operation of such technology protection measure during any use of a computer or wireless internet access by a minor.

(b)(i) Shall have in place a policy of internet safety, which may include the operation of a technology protection measure with respect to any publicly accessible wireless internet access or publicly accessible computers with internet access and that protects against access through such computers or wireless internet access to visual depictions that are obscene or child pornography; and

(ii) May enforce the operation of such technology protection measure during any use of a computer or wireless internet access.

(2) The provisions of this section shall not prohibit a public library from limiting internet access or otherwise protecting against materials other than the materials specified in this section.

(3) An administrator, supervisor or other authorized representative of a public library may disable a technology protection measure described in subsection (1) of this section at the request of a library patron to enable access for lawful purposes.

(4) Each public library's policy shall be developed under the direction of the library's board of trustees, adopted in an open meeting and shall have an effective date. The board of trustees shall review the policy at least once every three (3) years. The policy shall reflect the most recent date of review.

(5) Notice of the availability of the policy shall be posted in a conspicuous place within the library for all patrons to observe. The board of trustees may issue any other public notice it considers appropriate to inform the community about the policy.

(6) The policy may:

(a) State that it restricts access to internet or online sites that contain material described in subsection (1) of this section and how the policy meets the requirements provided for in this section;

(b) Inform patrons that administrative procedures and guidelines for library staff to follow in enforcing the policy have been adopted and are available for review at the library; and

(c) Inform patrons that procedures for use by patrons and staff to handle complaints about the policy, its enforcement or about observed patron behavior have been adopted and are available for review at the library.

(7) For purposes of this section, the following terms shall have the following meanings:

(a) “Child pornography” means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(i) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(ii) Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(iii) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(b) “Harmful to minors” means any picture, image, graphic image file or other visual depiction that:

(i) Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex or excretion;

(ii) Depicts, describes or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) Taken as a whole, lacks serious literary, artistic, political or scientific value as to minors.

(c) “Minor” means anyone who has not attained the age of eighteen (18) years.

(d) “Obscene” means a depiction that:

(i) The average person, applying contemporary community standards, would find to appeal to the prurient interest;

(ii) Depicts or describes sexual conduct in a patently offensive way; and

(iii) Lacks serious literary, artistic, political or scientific value.

(e) “Public moneys” means any and all moneys belonging to or collected by the state or any political subdivision thereof including, but not necessarily limited to, any city, county, town or district therein.

(8) The provisions of this section shall have no effect on the provisions of [section 33-132, Idaho Code](#).

### **History.**

[I.C., § 33-2741](#), as added by 2011, ch. 260, § 1, p. 705; am. 2019, ch. 313, § 1, p. 936.

## **STATUTORY NOTES**

### **Amendments.**

The 2019 amendment, by ch. 313, in subsection (1), inserted “publicly accessible wireless internet access or” near the middle of paragraphs (a)(i) and (b)(i) and inserted “or wireless internet access” near the end of paragraphs (a)(i), (a)(ii), (b)(i) and (b)(ii).

### **Effective Dates.**

Section 2 of S.L. 2011, ch. 260 provided that the act should take effect on and after October 12, 2012.

Section 2 of S.L. 2019, ch. 313 provided that the amendment of this section should take effect on and after July 1, 2020.



## **CHAPTER 28**

### **UNIVERSITY OF IDAHO**

#### **Section.**

33-2801. University established.

33-2802. Board of regents.

33-2803. Executive committee of board. [Repealed.]

33-2804. General duties of board.

33-2805. Meetings of board — Quorum — Adjournment.

33-2806. Powers of board — Sectarian tests prohibited.

33-2807. Erection of buildings.

33-2808. Duties of treasurer.

33-2809. State treasurer as treasurer of regents of university.

33-2810. Deposit of moneys of regents of University of Idaho.

33-2811. Powers of president and faculty — Courses of study and textbooks  
— Diplomas — Discipline of students.

33-2812. Departments of university.

33-2813. College of agriculture.

33-2814. Courses.

33-2815. Practical prospecting and practical mining — Courses in.

33-2816. Women students admitted.

33-2817. Tuition not required — Exceptions. [Repealed.]

**33-2801. University established.** — There is hereby established in this state, at the town of Moscow, in the county of Latah, an institution of learning, by the name and style of the University of Idaho.

**History.**

1888-1889, p. 21, § 1; reen. R.C. & C.L., § 485; C.S., § 1056; I.C.A., § 32-2301.

**STATUTORY NOTES**

**Cross References.**

Location and rights confirmed, Idaho [Const., Art. IX, § 10](#).

Fees at state colleges and universities, § 33-3717A.

**JUDICIAL DECISIONS**

**Cited in:** [George v. University of Idaho, 121 Idaho 30, 822 P.2d 549 \(Ct. App. 1991\)](#).

**33-2802. Board of regents.** — The general supervision, government and control of the University of Idaho is vested in the state board of education which also constitutes the board of regents of the university and is known as the state board of education and board of regents of the University of Idaho.

### **History.**

1888-1889, p. 21, § 2; 1901, p. 14, § 1; R.C., § 486; 1913, ch. 77, §§ 1, 3, p. 328; C.L., § 486; C.S., § 1057; I.C.A., § 32-2302; am. 1993, ch. 404, § 4, p. 1470; am. 1999, ch. 56, § 3, p. 143.

## **STATUTORY NOTES**

### **Cross References.**

State board of education as board of regents of university, § 33-101.

State educational institutions as bodies politic and corporate, § 33-3803.

## **JUDICIAL DECISIONS**

### **Analysis**

[Indebtedness.](#)

[Constitutionality.](#)

[Successors to old board of regents.](#)

**[Indebtedness.](#)**

Board of regents as it existed prior to 1913 had no authority to incur any indebtedness against state, directly or indirectly, in erection of university buildings for which it did not have the funds to pay. [Moscow Hdwe. Co. v. Regents of Univ. of Idaho, 19 Idaho 420, 113 P. 731 \(1911\).](#)

**[Constitutionality.](#)**

Since Idaho [Const., Art. IX, § 2](#) requires a single board of education to supervise the state educational institutions and public school system of the State of Idaho, House Bill 345 (1993, ch. 404, which amended §§ 33-101,



33-102, 33-102A, and 33-2802), which created three boards of education, was unconstitutional. *Evans v. Andrus*, 124 Idaho 6, 855 P.2d 467 (1993).

### **Successors to Old Board of Regents.**

Session Laws 1913, ch. 77, p. 328, made the state board of education successor of old board of regents of University of Idaho and as such had the power to defend action previously instituted against old board for preexisting obligation. *First Nat'l Bank v. Regents of Univ.*, 26 Idaho 15, 140 P. 771 (1914).

**33-2803. Executive committee of board. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1888-1889, p. 21, § 15; reen. R.C. & C.L., § 487; C.S., § 1058; I.C.A., § 32-2303 was repealed by S.L. 1981, ch. 20, § 1.

**33-2804. General duties of board.** — The members of the state board of education in the performance of their functions as the board of regents of the university and their successors in office, shall constitute a body corporate, by the name of the regents of the University of Idaho, and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and other property of said university. The board shall elect a president, secretary and treasurer, who shall perform such duties as shall be prescribed by the by-laws of the board. The secretary shall keep a faithful record of all the transactions of the board and of the executive committee thereof. The treasurer shall perform all the duties of such office, subject to such regulations as the board may adopt, and shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

#### **History.**

1888-1889, p. 21, § 3; reen. R.C., § 488; am. by implication 1913, ch. 77, § 3, p. 328; compiled and reen. C.L., § 488; C.S., § 1059; I.C.A., § 32-2304; am. 1971, ch. 136, § 16, p. 522.

### **STATUTORY NOTES**

#### **Cross References.**

Duties of treasurer, § 33-2808.

Powers of boards, § 33-3803.

Regents to have general supervision of university and the control and direction of its funds, Idaho [Const., Art. IX, § 10](#).

#### **Effective Dates.**

Section 87 of S.L. 1971, ch. 136 declared an emergency. Approved March 18, 1971.

### **JUDICIAL DECISIONS**

## Analysis

Bond issues.

Power to sue and be sued.

### **Bond Issues.**

A statute authorizing the board of regents of the University of Idaho as a corporation to issue bonds to be amortized over a thirty-year period from revenues accruing from project financed by bond proceeds does not violate the constitutional limitations on indebtedness of subdivisions of the state, since the board of regents is not within the scope of the constitutional limitation. *State ex rel. Miller v. State Bd. of Educ.*, 56 Idaho 210, 52 P.2d 141 (1935).

### **Power to Sue and Be Sued.**

Board of regents as it existed prior to 1913 was a body corporate and had implied power to sue and be sued. Action against them was not, in effect, an action against state. *American Bonding Co. v. Regents of Univ. of Idaho*, 11 Idaho 163, 81 P. 604 (1905); *Phoenix Lumber Co. v. Regents of Univ. of Idaho*, 197 F. 425 (C.C.D. Idaho 1908), overruled on other grounds, *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988); *Moscow Hdwe. Co. v. Regents of Univ. of Idaho*, 19 Idaho 420, 113 P. 731 (1911); *Interstate Constr. Co. v. Regents of Univ. of Idaho*, 199 F. 509 (D. Idaho 1912), overruled on other grounds, *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988); *First Nat'l Bank v. Regents of Univ.*, 26 Idaho 15, 140 P. 771 (1914).

Session Laws 1913, ch. 77, p. 328, made the state board of education the successor of the old board of regents of the University of Idaho and, whether or not an action could be maintained against such new board, the new board could, nevertheless, defend an action which had previously been instituted against the old board of regents. *First Nat'l Bank v. Regents of Univ.*, 26 Idaho 15, 140 P. 771 (1914).

The state board of education acting as the board of regents of the University of Idaho is a constitutional corporation with granted powers and, while functioning within scope of its authority, is not subject to control or supervision of any other branch, board, or department of the state government, but is a separate entity, and may sue and be sued, with power to contract and discharge indebtedness, with right to exercise its discretion

within the powers granted, without authority to contract indebtedness against the state, and in no sense is a claim against the regents one against the state. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

**33-2805. Meetings of board — Quorum — Adjournment.** — The time of the election of the president, secretary and treasurer of said board, and the duration of their respective terms of office and the time for holding such meetings as may be required, and the manner of notifying the same, shall be determined by the by-laws of the board. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

**History.**

1888-1889, p. 21, § 4; reen. R.C., § 489; modified by 1913, ch. 77, § 5, p. 330; compiled and reen. C.L., § 489; C.S., § 1060; I.C.A., § 32-2305.

**33-2806. Powers of board — Sectarian tests prohibited.** — The board of regents shall enact laws for the government of the university in all its branches, elect a president and the requisite number of professors, instructors, officers and employees, and fix the salaries and the term of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no instruction either sectarian in religion or partisan in politics shall ever be allowed in any department of the university, and no sectarian or partisan test shall ever be allowed or exercised in the appointment of regents or in the election of professors, teachers, or other officers of the university, or in the admission of students thereto, or for any purpose whatever. The board of regents shall have power to remove the president or any professor, instructor or officer of the university, when, in their judgment, the interests of the university require it. The board may prescribe rules and regulations for the management of the libraries, cabinets, museum, laboratories and all other property of the university and of its several departments, and for the care and preservation thereof, with penalties and forfeitures, by way of damages for their violation, which may be sued for and collected in the name of the board before any court having jurisdiction of such action.

**History.**

1888-1889, p. 21, § 5; reen. R.C. & C.L., § 490; C.S., § 1061; I.C.A., § 32-2306.

**STATUTORY NOTES**

**Cross References.**

Dormitory fund, § 33-3702.

Gifts, legacies and devises for state educational institutions, § 33-3714.

Religious tests, qualifications, and teachings prohibited, Idaho [Const.](#), [Art. IX](#), § 6.

**JUDICIAL DECISIONS**

### **Statute Read Into Contract.**

Provision empowering board to remove a professor is part of the contract between professor and board. [Hyslop v. Regents of Univ., 23 Idaho 341, 129 P. 1073 \(1913\).](#)

### **RESEARCH REFERENCES**

**A.L.R.** — Elements and measure of damages in action by schoolteacher for wrongful discharge. [22 A.L.R.3d 1047.](#)

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. [78 A.L.R.3d 19.](#)



**33-2807. Erection of buildings.** — The board of regents are authorized to expend such portion of the income of the university [income] fund as they may deem expedient for the erection of suitable buildings and the purchase of apparatus, a library, cabinets and additions thereto.

**History.**

R.C., § 491; reen. C.L., § 491; C.S., § 1062; I.C.A., § 32-2307.

**STATUTORY NOTES**

**Cross References.**

Bonds, issuance under Educational Institutions Act of 1935, § 33-3801 et seq.

Contract for housing facilities at state institutions, § 33-3701.

Permanent building fund, § 57-1101 et seq.

University earnings reserve fund, § 33-2909A.

University permanent endowment fund, § 33-2909.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to reflect the correct name of the referenced fund. See § 33-2910.

**JUDICIAL DECISIONS**

Analysis

[Liability of board on contracts.](#)

[Limitations on expenditures.](#)

**[Liability of Board on Contracts.](#)**

Board may enter into a contract for erection of buildings for said university, and, if it fails to comply with contract, action may be maintained in district court against it to compel it to do so. [Moscow Hdwe. Co. v. Regents of Univ. of Idaho, 19 Idaho 420, 113 P. 731 \(1911\).](#)

### **Limitations on Expenditures.**

Under this section, board is not authorized to expend any portion of university funds that have been raised or appropriated for other purposes for erection of buildings. *Moscow Hdwe. Co. v. Regents of Univ. of Idaho*, 19 Idaho 420, 113 P. 731 (1911).

Board has no authority to incur any indebtedness in erection of university buildings for which it has not the funds to pay. *Moscow Hdwe. Co. v. Regents of Univ. of Idaho*, 19 Idaho 420, 113 P. 731 (1911).

**33-2808. Duties of treasurer.** — The treasurer of said board shall, out of any moneys in his hands belonging to said board, pay all orders drawn upon him by the president and secretary thereof, when accompanied by vouchers fully explaining the character of the expenditure, and the books and accounts of the treasurer shall at all times be opened to the inspection of the board. The treasurer shall make an annual report to the president of the board of all transactions connected with the duties of his office.

**History.**

1888-1889, p. 21, § 17; reen. R.C. & C.L., § 492; C.S., § 1063; I.C.A., § 32-2308.

**STATUTORY NOTES**

**Cross References.**

Bursar at state educational institutions, § 33-3712.

General duties of treasurer, § 33-2804.

**33-2809. State treasurer as treasurer of regents of university.** — In the event the state board of education, acting as the regents of the University of Idaho, shall elect the state treasurer as the treasurer of the regents of the university, the said state treasurer is hereby empowered and directed to act as the treasurer of the regents of the University of Idaho and as such officer of the regents of the university he shall receive and deposit all funds received by him in such general or special fund that the regents may find necessary and expedient to create for the lawful management of the finances of the University of Idaho and shall disburse all funds deposited with him as provided for in section 33-2808[, Idaho Code].

**History.**

1927, ch. 100, § 1, p. 130; I.C.A., § 32-2309.

**STATUTORY NOTES**

**Cross References.**

State auditor authorized to keep records of general and special funds created by board of regents, § 67-1031.

University income fund, § 33-2910.

**Compiler's Notes.**

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

**33-2810. Deposit of moneys of regents of University of Idaho.** — The state treasurer shall deposit and at all times keep on deposit, subject to the provisions of chapter 27 of title 67[, Idaho Code], being the State Depository Law, and subsequent amendments thereof, all moneys deposited with him as treasurer of the regents of the University of Idaho in the event he shall be elected as such treasurer by such board: provided, however, that the moneys belonging to regents of the University of Idaho shall be so deposited and accounted for that any and all interest accruing for and on account thereof shall be accredited to any general or special fund of the regents of the University of Idaho.

**History.**

1927, ch. 79, § 1, p. 98; I.C.A., § 32-2310.

**STATUTORY NOTES**

**Compiler's Notes.**

As originally enacted, this section contained a reference to “Chapter 17 of Title 2 of Part 1 of the Idaho Compiled Statutes, being the State Depository Law.” In Idaho Code Annotated, this was changed to read “Chapter 26 of title 65.” Those provisions are now compiled as chapter 27 of title 67 and the text reference has been changed to correspond.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**33-2811. Powers of president and faculty — Courses of study and textbooks — Diplomas — Discipline of students.** — The president of the university shall be president of the faculty, or of the several faculties as they may be hereafter established, and the executive head of the instructional force in all its departments. As such, he shall have authority, subject to the board of regents, to give general direction to the instruction and scientific investigation of the university, and so long as the interests of the institution require it, he shall be charged with the duties of one of the professorships. The immediate government of the university shall be intrusted to the faculty, but the regents shall have the power to regulate courses of instruction, and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in universities, or as they shall deem appropriate, and to confer upon the faculty, by by-laws, the power to suspend or expel students for misconduct or other cause prescribed by such by-laws.

**History.**

1888-1889, p. 21, § 8; reen. R.C. & C.L., § 495; C.S., § 1064; I.C.A., § 32-2311.

**RESEARCH REFERENCES**

**A.L.R.** — Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college. 32 A.L.R.3d 864.

**33-2812. Departments of university.** — The object of the University of Idaho shall be to provide the means of acquiring a thorough knowledge of the various branches of learning connected with the scientific, industrial and professional pursuits, and to this end it shall consist of the following colleges or departments, to wit:

1. The college or department of arts.
2. The college or department of letters.
3. The professional or other colleges or departments, as may from time to time be added thereto or connected therewith.

**History.**

1888-1889, p. 21, § 9; reen. R.C. & C.L., § 496; C.S., § 1065; I.C.A., § 32-2312.

**33-2813. College of agriculture.** — The action of the regents of the University of Idaho, in establishing and maintaining a college of agriculture in connection with the university at Moscow, and in accordance with an act of Congress, approved July 2, 1862, and known as the land grant act, as supplemented by an act of Congress for the more complete endowment and support of colleges of agriculture and mechanic arts, approved August 30, 1890, is a proper exercise of the lawful powers of the regents as set forth in the act creating the university, and the clauses of the state constitution confirming the same. And the said action of the regents in establishing and maintaining the said college of agriculture in accordance with said laws, is hereby expressly approved and confirmed.

**History.**

1909, p. 38; reen. C.L., § 496a; C.S., § 1066; I.C.A., § 32-2313.

**STATUTORY NOTES**

**Cross References.**

Agricultural college earnings reserve fund, § 33-2913A.

Agricultural college permanent endowment fund, § 33-2913.

Rights of university confirmed, Idaho [Const., Art. IX, § 10](#).

Scientific school permanent endowment fund, § 33-2911.

**Federal References.**

The act of Congress approved July 2, 1862, and known as the land grant act, referred to in the first sentence of this section, is compiled as [7 U.S.C. §§ 301 to 305, 307, 308](#).

The act of Congress approved August 30, 1890, referred to in the first sentence of this section, is compiled as [7 U.S.C. §§ 321 to 326, 328](#).

**JUDICIAL DECISIONS**

**Federal Funds.**



Congressional appropriation for college of agriculture should not be placed in general fund of state. *Melgard v. Eagleson*, 31 Idaho 411, 172 P. 655 (1918).

**33-2814. Courses.** — Subject to the authority of the regents to prescribe programs and courses of study, the college or department of arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to the industrial arts, such as agriculture, mechanics, engineering, mining and metallurgy, manufactures [manufacturing], architecture and commerce, and such branches included in the college of letters as shall be necessary to a proper fitness of the pupils in the scientific and practical courses for their chosen pursuits; and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their application to the practical arts shall be expanded into distinct colleges of the university, each with its own faculty and appropriate title. The college of letters shall be coexistent with the college of arts and shall embrace a liberal course of instruction in language, literature and philosophy, together with such courses or parts of courses in the college of arts as the regents of the university shall prescribe.

**History.**

1888-1889, p. 21, § 10; reen. R.C. & C.L., § 497; C.S., § 1067; I.C.A., § 32-2314; am. 1983, ch. 155, § 3, p. 431.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed word “manufacturing”, in the first sentence, was inserted by the compiler to supply the probable intended term.

**33-2815. Practical prospecting and practical mining — Courses in.**

— The board of regents of the University of Idaho, and of the Idaho geological survey may prescribe a special course of instructions in practical prospecting, including a short course in practical mining including identification and classification of minerals at the University of Idaho, or in a mobile unit of the school of mines, which shall be open to special students desirous of studying such subjects, but who may be ineligible for admission to enter the University of Idaho on account of having deficient entrance credits.

**History.**

1945, ch. 136, § 1, p. 206; am. 2009, ch. 11, § 9, p. 14.

**STATUTORY NOTES**

**Cross References.**

Idaho geological survey, § 47-201 et seq.

**Amendments.**

The 2009 amendment, by ch. 11, substituted “Idaho geological survey” for “Idaho bureau of mines and geology.”

**33-2816. Women students admitted.** — The university shall be open to female as well as male students, under such regulations and restrictions as the board of regents may deem proper.

**History.**

1888-1889, p. 21, § 11; reen. R.C. & C.L., § 498; C.S., § 1068; I.C.A., § 32-2315.

**33-2817. Tuition not required — Exceptions. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1888-1889, § 12, p. 21; reen. R.C. & C.L., § 499; C.S., § 1069; I.C.A., § 32-2316, was repealed by S.L. 1970, ch. 226, § 2. For present comparable law, see § 33-3717A.



## **CHAPTER 29**

### **UNIVERSITY OF IDAHO — FEDERAL EDUCATIONAL AID**

#### **Section.**

- 33-2901. Assent to Morrill acts.
- 33-2902. Assent to Hatch act.
- 33-2903. Assent to Adams act.
- 33-2904. Assent to Smith-Lever act.
- 33-2905. Assent to Purnell act — Agricultural experimentation.
- 33-2906. Purnell act — Receipt and expenditure of appropriations.
- 33-2907. Purnell act — Continuing appropriation of moneys received.
- 33-2908. Assent to act of May 22, 1928 — Agricultural extension work.
- 33-2909. University permanent endowment fund.
- 33-2909A. University earnings reserve fund.
- 33-2910. University income fund.
- 33-2911. Scientific school permanent endowment fund.
- 33-2911A. Scientific school earnings reserve fund.
- 33-2912. Scientific school income fund.
- 33-2913. Agricultural college permanent endowment fund.
- 33-2913A. Agricultural college earnings reserve fund.
- 33-2914. Agricultural college income fund.

**33-2901. Assent to Morrill acts.** — The assent of the legislature of the state of Idaho is hereby given to all the provisions of an act of Congress, approved July 2, 1862, entitled, “An act donating public lands to the several states which may provide colleges for the benefit of agriculture and the mechanic arts,” and the acts amendatory thereof and supplementary thereto.

**History.**

1890-1891, p. 16, § 1, first part; reen. 1899, p. 9, § 1, first part; reen. R.C., § 29, first part; reen. C.L. 40:1; C.S., § 1070; I.C.A., § 32-2401.

**STATUTORY NOTES**

**Federal References.**

The act of Congress, approved July 2, 1862, popularly known as the Morrill act, and the acts amendatory thereof, are compiled as **7 U.S.C.S. § 301 et seq.**



**33-2902. Assent to Hatch act.** — The assent of the legislature of the state of Idaho is hereby given to all the provisions of an act of Congress, approved March 2, 1887, entitled, “An act to establish agricultural experimental stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and the acts supplemental thereto,” and the acts amendatory thereof and supplementary thereto.

**History.**

1890-1891, p. 16, § 1; reen. 1899, p. 9, § 1; reen. R.C., § 29, second part; compiled and reen. C.L. 40:2; C.S., § 1071; I.C.A., § 32-2402.

**STATUTORY NOTES**

**Federal References.**

The act of Congress, approved March 2, 1887, known as the Hatch act of 1887, as amended, is compiled as **7 U.S.C.S. § 361a et seq.**

**33-2903. Assent to Adams act.** — The assent of the legislature of the state of Idaho shall be, and the same is hereby, given to all the provisions of an act of Congress, approved March 16, 1906, entitled, “An act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditures thereof.” And the legislature of the state of Idaho hereby approves of, and assents to, the purposes of the grants and appropriations provided for and made by said act of Congress, and hereby agrees to abide by the terms, conditions, requirements and limitations thereof.

**History.**

1907, p. 22, § 1; reen. R.C., § 30; compiled and reen. C.L. 40:3; C.S., § 1072; I.C.A., § 32-2403.

**STATUTORY NOTES**

**Federal References.**

The act of Congress, approved March 16, 1906, known as the Adams act of 1906, was repealed by Act Aug. 11, 1955, ch. 790, § 2. The present federal statutes concerning agricultural experimental stations are compiled at [7 U.S.C.S § 361a et seq.](#)

**33-2904. Assent to Smith-Lever act.** — The assent of the legislature of the state of Idaho is given to the provisions and requirements of an act of Congress, approved May 8, 1914, entitled, “An act to provide for the cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of Congress approved July 2, 1863, and of acts supplementary thereto, and the United States department of agriculture.” The state board of education and board of regents of the University of Idaho are authorized and empowered to receive the grants of money appropriated under such act, and to organize and conduct agricultural extension work which shall be carried on in connection with the terms and conditions expressed in the act of Congress aforesaid; and the treasurer of the state board of education and board of regents of the University of Idaho is hereby designated as the officer to whom all moneys granted to the state of Idaho under said act shall be paid.

**History.**

1915, p. 397; 1917, ch. 157, p. 483; compiled and reen. C.L. 40:4; C.S., § 1073; I.C.A., § 32-2404.

**STATUTORY NOTES**

**Federal References.**

The act of Congress, approved May 8, 1914, known as the Smith-Lever act, is compiled as [7 U.S.C.S. § 341 et seq.](#)

**33-2905. Assent to Purnell act — Agricultural experimentation. —**

The assent of the legislature of the state of Idaho is hereby given to all provisions and requirements of an act of Congress approved February 24, 1925, commonly known as “The Purnell Act” and entitled “An act to authorize more complete endowment of agricultural experimentation and for other purposes,” and the acts amendatory thereof and supplementary thereto.

**History.**

1927, ch. 22, § 1, p. 27; I.C.A., § 32-2405.

**STATUTORY NOTES**

**Federal References.**

The Purnell Act of 1925, approved February 24, 1925, referred to in this section, was repealed by act Aug. 11, 1955, ch. 790, § 2. The present federal statutes concerning agricultural experimental stations are compiled at [7 U.S.C.S. § 361a et seq.](#)

**33-2906. Purnell act — Receipt and expenditure of appropriations.**

— The regents of the University of Idaho are authorized and empowered to receive any grants of money appropriated under such act and to expend the same in accordance with the terms, conditions, requirements, and limitations of said act, and the treasurer of the regents of the university is hereby designated as the officer to whom all moneys granted to the state of Idaho under said act shall be paid.

**History.**

1927, ch. 22, § 2, p. 27; I.C.A., § 32-2406.

**STATUTORY NOTES**

**Federal References.**

The references to “such act” and “said act” in this section are to the Purnell Act of 1925. The Purnell Act of 1925, approved February 24, 1925, referred to in this section, was repealed by act Aug. 11, 1955, ch. 790, § 2. The present federal statutes concerning agricultural experimental stations are compiled at **7 U.S.C.S. § 361a et seq.**

**33-2907. Purnell act — Continuing appropriation of moneys received.** — All moneys accruing or accrediting to, and which may be received for and on account of said act are hereby perpetually appropriated and set apart for the support and maintenance of the work contemplated in the aforementioned act of Congress.

**History.**

1927, ch. 22, § 3, p. 27; I.C.A., § 32-2407.

**STATUTORY NOTES**

**Federal References.**

The references to “said act” and “aforementioned act” in this section are to the Purnell Act of 1925. The Purnell Act of 1925, approved February 24, 1925, referred to in this section, was repealed by act Aug. 11, 1955, ch. 790, § 2. The present federal statutes concerning agricultural experimental stations are compiled at [7 U.S.C.S. § 361a et seq.](#)

**33-2908. Assent to act of May 22, 1928 — Agricultural extension work.** — The state of Idaho hereby assents to the provisions and requirements of an act of Congress approved May 22, 1928, entitled “An act to provide for the further development of agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act entitled ‘An act donating public lands of the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts’ approved July 2, 1862, and all acts supplementary thereto, and the United States Department of Agriculture”; and hereby authorizes the state board of education and board of regents of the University of Idaho to receive the grants of money appropriated under said act and to organize and conduct agricultural extension work which shall be carried on in connection with the college of agriculture of the state university in accordance with the terms and conditions expressed in the said act of Congress.

**History.**

1929, ch. 269, § 1, p. 27; I.C.A., § 32-2408.

**STATUTORY NOTES**

**Cross References.**

Agricultural and home economics demonstration work, county commissioners may provide funds, § 31-839.

**Federal References.**

The act of Congress, approved May 22, 1928, was repealed by Act June 26, 1953, ch. 157, § 2.

**33-2909. University permanent endowment fund.** — (1) There is established in the state treasury the university permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

(a) Proceeds from the sale of any lands granted to the state of Idaho by the United States government for university purposes under the provisions of the act of congress of February 18, 1881, entitled “An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes,” as amended by the Idaho Admission Bill 26 Stat. L. 215, ch. 656, and lands granted in lieu of university lands;

(b) Proceeds of royalties arising from the extraction of minerals on university endowment lands owned by the state;

(c) Moneys allocated from the university earnings reserve fund.

(2) Proceeds from the sale of university endowment lands may be first deposited into the land bank fund established in [section 58-133, Idaho Code](#), for the benefit of endowment beneficiaries. If the proceeds from the sale of land are not used to acquire other lands in accordance with [section 58-133, Idaho Code](#), the land sale proceeds shall be deposited into the university permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the investment of the university permanent endowment fund shall be distributed according to the provisions of [section 57-723A, Idaho Code](#).

#### **History.**

[I.C., § 33-2909](#), as added by 1998, ch. 256, § 11, p. 825.

#### **STATUTORY NOTES**



## **Cross References.**

Endowment fund investment board, § 57-718.

State board of land commissioners, Idaho [Const., Art. IX, § 7](#), and [§ 58-101](#).

University earnings reserve fund, § 33-2909A.

## **Prior Laws.**

Former § 33-2909, which comprised 1905, p. 417, §§ 1, 2; R.C., § 17, subd. 74; reen. C.L. 40:6; C.S., § 1074; I.C.A., § 32-2409; am. 1994, ch. 180, § 48, p. 420, was repealed by S.L. 1998, ch. 256, § 10, effective July 1, 2000.

## **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part, added and repealed this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of [Article IX of the Constitution](#) of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-2909A. University earnings reserve fund.** — (1) There is established in the state treasury the university earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund shall consist of the following:

(a) All earnings from the university permanent endowment fund; (b) Proceeds of the sale of timber growing upon university endowment lands; (c) Proceeds of leases of university endowment lands; (d) Proceeds of interest charged upon deferred payments on university endowment lands or on timber on those lands; and (e) All other proceeds received from the use of university endowment lands and not otherwise designated for deposit in the university permanent endowment fund.

(2) Moneys shall be distributed out of the university earnings reserve fund only to support the beneficiaries of the university endowment, including distributions by the state board of land commissioners to the university permanent endowment fund and the university income fund; provided, that funds shall not be appropriated by the legislature from the university earnings reserve fund except to pay for administrative costs incurred managing the assets of the university endowment including, but not limited to, real property and monetary assets.

### **History.**

I.C., § 33-2909A, as added by 1998, ch. 256, § 12, p. 825.

## **STATUTORY NOTES**

### **Cross References.**

Endowment fund investment board, § 57-718.

State board of land commissioners, Idaho Const., Art. IX, § 7, and § 58-101.

University earnings reserve fund, § 33-2909A.

University income fund, § 33-2910.

University permanent endowment fund, § 33-2909.

**Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of **Article IX of the Constitution** of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-2910. University income fund.** — There is established in the state treasury the university income fund. The fund shall consist of all moneys distributed from the university earnings reserve fund and from other sources as the legislature deems appropriate. Moneys in the university income fund shall be used for the benefit of beneficiaries of the university endowment and distributed to current beneficiaries of the endowment pursuant to legislative appropriation.

**History.**

I.C., § 33-2910, as added by 1998, ch. 256, § 14, p. 825.

**STATUTORY NOTES**

**Cross References.**

University earnings reserve fund, § 33-2909A.

**Prior Laws.**

Former § 33-2910, which comprised 1905, p. 417, § 4; R.C., § 17, subd. 74; compiled and reen. C.L. 40:7; C.S., § 1075; I.C.A., § 32-2410, was repealed by S.L. 1998, ch. 256, § 13, effective July 1, 2000.

**Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part, added and repealed this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of [Article IX of the Constitution](#) of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have

occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-2911. Scientific school permanent endowment fund.** — (1) There is established in the state treasury the scientific school permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

- (a) Proceeds of the sale of lands granted to the state of Idaho by the United States government under the provisions of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, known as scientific school endowment lands, and those granted in lieu of such lands;
- (b) Proceeds of royalties arising from the extraction of minerals on scientific school endowment lands owned by the state;
- (c) Moneys allocated from the scientific school earnings reserve fund.

(2) Proceeds from the sale of scientific school endowment lands may be first deposited into the land bank fund established in [section 58-133, Idaho Code](#), to be used to acquire other lands within the state for the benefit of beneficiaries of the scientific school endowment. If the land sale proceeds are not used to acquire other lands in accordance with [section 58-133, Idaho Code](#), the proceeds shall be deposited into the scientific school permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the investment of the scientific school permanent endowment fund shall be distributed according to the provisions of [section 57-723A, Idaho Code](#).

### **History.**

[I.C., § 33-2911](#), as added by 1998, ch. 256, § 16, p. 825.

## **STATUTORY NOTES**

### **Cross References.**

Endowment fund investment board, § 57-718.

Scientific school earnings reserve fund, § 33-2911A.

State board of land commissioners, Idaho **Const., Art. IX, § 7**, and **§ 58-101**.

### **Prior Laws.**

Former § 33-2911, which comprised 1905, p. 418, § 1; continued in force R.C., § 17, subd. 75; reen. C.L. 40:8; C.S., § 1076; I.C.A., § 32-2411; am. 1994, ch. 180, § 49, p. 420, was repealed by S.L. 1998, ch. 256, § 15, effective July 1, 2000.

### **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part, repealed and added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of **Article IX of the Constitution** of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-2911A. Scientific school earnings reserve fund.** — (1) There is established in the state treasury the scientific school earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund shall consist of the following:

(a) All earnings of the scientific school permanent endowment fund; (b) Proceeds of the sale of timber on scientific school endowment lands; (c) Proceeds of leases of scientific school lands; (d) Proceeds of interest charged upon deferred payments on scientific school endowment lands or on timber on those lands; and (e) All other proceeds received from the use of scientific school endowment lands and not otherwise designated for deposit in the scientific school permanent endowment fund.

(2) Moneys shall be distributed out of the scientific school earnings reserve fund only to support the beneficiaries of the scientific school endowment, including distributions by the state board of land commissioners to the scientific school permanent endowment fund and the scientific school income fund; provided, that funds shall not be appropriated by the legislature from the scientific school earnings reserve fund except to pay for administrative costs incurred managing the assets of the scientific school endowment including, but not limited to, real property and monetary assets.

### **History.**

I.C., § 33-2911A, as added by 1998, ch. 256, § 17, p. 825.

## **STATUTORY NOTES**

### **Cross References.**

Endowment fund investment board, § 57-718.

Scientific school permanent endowment fund, § 33-2911.

State board of land commissioners, Idaho **Const., Art. IX, § 7**, and § 58-101.



## **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of **Article IX of the Constitution** of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-2912. Scientific school income fund.** — There is established in the state treasury the scientific school income fund. The fund shall consist of all moneys distributed from the scientific school earnings reserve fund and from other sources as the legislature deems appropriate. Moneys in the scientific school income fund shall be used for the benefit of the beneficiaries of the endowment and distributed to current beneficiaries of the scientific school endowment pursuant to legislative appropriation.

**History.**

I.C., § 33-2912, as added by 1998, ch. 256, § 19, p. 825.

**STATUTORY NOTES**

**Cross References.**

Scientific school earnings reserve fund, § 33-2911A.

**Prior Laws.**

Former § 33-2912, which comprised 1905, p. 418, § 2; 1907, p. 26, § 1; continued in force R.C., § 17, subd. 81; compiled and reen. C.L. 40:9; C.S., § 1077; I.C.A., § 32-2412, was repealed by S.L. 1998, ch. 256, § 18, effective July 1, 2000.

**Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part repealed and added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of **Article IX of the Constitution** of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have

occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-2913. Agricultural college permanent endowment fund. — (1)**

There is established in the state treasury the agricultural college permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

- (a) Proceeds of the sale of agricultural college endowment lands granted to the state of Idaho by the United States government under the provisions of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656;
- (b) Proceeds of royalties arising from the extraction of minerals on agricultural college endowment lands owned by the state;
- (c) Moneys allocated from the agricultural college earnings reserve fund.

(2) Proceeds from the sale of agricultural college endowment lands may be first deposited into the land bank fund established in [section 58-133, Idaho Code](#), to be used to acquire other lands within the state for the benefit of beneficiaries of the agricultural college endowment. If the land sale proceeds are not used to acquire other lands in accordance with [section 58-133, Idaho Code](#), the proceeds shall be deposited into the agricultural college permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the agricultural college permanent endowment fund shall be distributed according to the provisions of [section 57-723A, Idaho Code](#).

**History.**

[I.C., § 33-2913](#), as added by 1998, ch. 256, § 21, p. 825.

**STATUTORY NOTES**

**Cross References.**

Agricultural college earnings reserve fund, § 33-2913A.

Endowment fund investment board, § 57-718.

State board of land commissioners, Idaho **Const., Art. IX, § 7**, and **§ 58-101**.

### **Prior Laws.**

Former § 33-2913, which comprised 1905, p. 419; R.C., § 17, subd. 76; am. 1911, ch. 26, §§ 1, 2, p. 62; reen. C.L. 40:10; C.S., § 1078; I.C.A., § 32-2413; am. 1994, ch. 180, § 50, p. 420, was repealed by S.L. 1998, ch. 256, § 20, effective July 1, 2000.

### **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part, repealed and added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of **Article IX of the Constitution** of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-2913A. Agricultural college earnings reserve fund.** — (1) There is established in the state treasury the agricultural college earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund shall consist of the following:

- (a) All earnings of the agricultural college permanent endowment fund;
- (b) Proceeds of the sale of timber growing on agricultural college endowment lands;
- (c) Proceeds of leases of agricultural college endowment lands;
- (d) Proceeds of interest charged upon deferred payments on agricultural college endowment lands or on timber on those lands; and
- (e) All other proceeds received from the use of agricultural college endowment lands and not otherwise designated for deposit in the agricultural college permanent endowment fund.

(2) Moneys shall be distributed out of the agricultural college earnings reserve fund only to support the beneficiaries of the agricultural college endowment, including distributions by the state board of land commissioners to the agricultural college permanent endowment fund and the agricultural college income fund; provided, that funds shall not be appropriated by the legislature from the agricultural college earnings reserve fund except to pay for administrative costs incurred managing the assets of the agricultural college endowment including, but not limited to, real property and monetary assets.

**History.**

I.C., § 33-2913A, as added by 1998, ch. 256, § 22, p. 825.

**STATUTORY NOTES**

**Cross References.**

Agricultural college income fund, § 33-2914.

Agricultural college permanent endowment fund, § 33-2913.

Endowment fund investment board, § 57-718.

State board of land commissioners, Idaho [Const., Art. IX, § 7](#), and [§ 58-101](#).

### **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of [Article IX of the Constitution](#) of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-2914. Agricultural college income fund.** — There is established in the state treasury the agricultural college income fund. The fund shall consist of all moneys distributed from the agricultural college earnings reserve fund and from other sources as the legislature deems appropriate. Moneys in the agricultural college income fund shall be used for the benefit of the beneficiaries of the endowment and distributed to current beneficiaries of the agricultural college endowment pursuant to legislative appropriation.

**History.**

I.C., § 33-2914, as added by 1998, ch. 256, § 24, p. 825.

**STATUTORY NOTES**

**Cross References.**

Agricultural college earnings reserve fund, § 33-2913A.

**Prior Laws.**

Former § 33-2914, which comprised 1911, ch. 26, §§ 3, 4, p. 63; compiled and reen. C.L. 40:11; C.S., § 1079; I.C.A., § 32-2414, was repealed by S.L. 1998, ch. 256, § 23, effective July 1, 2000.

**Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part, added and repealed this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of **Article IX of the Constitution** of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have



occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.



## **CHAPTER 30**

### **IDAHO STATE UNIVERSITY**

#### **Section.**

- 33-3001. Establishment of Idaho State University.
- 33-3002. Purposes of Idaho State University.
- 33-3003. Body politic and corporate — Board of trustees.
- 33-3004. Organization, meetings and proceedings of board.
- 33-3005. Title to property — Acquiring, selling or exchanging property.
- 33-3006. General powers of board of trustees.
- 33-3007. Tuition not required — Exceptions. [Repealed.]
- 33-3008. Board may maintain training school. [Repealed.]
- 33-3009. Sectarian tests prohibited.
- 33-3010. Funds, property and obligations transferred.
- 33-3011. Existing statutes to be construed.
- 33-3012. State museum of natural history.

**33-3001. Establishment of Idaho State University.** — There is hereby established in the city of Pocatello, Idaho, an institution of higher education to be designated and known as the Idaho State University, consisting of such colleges, schools or departments as may from time to time be authorized by the state board of education.

**History.**

1963, ch. 12, § 1, p. 23.

**STATUTORY NOTES**

**Cross References.**

State board of education to have supervision, § 33-101.

Fees at state colleges and universities, § 33-3717A.

**Compiler's Notes.**

For the history concerning the establishment of Idaho State University, see the Laws of 1901, p. 17; S.L. 1915, ch. 29; S.L. 1927, ch. 21; S.L. 1943, ch. 127; S.L. 1945, ch. 173; S.L. 1947, ch. 107; S.L. 1955, ch. 26.

**33-3002. Purposes of Idaho State University.** — Idaho State University shall be a comprehensive institution of higher education giving instruction in undergraduate, professional and graduate education, as approved by the board of trustees.

Courses of instruction in the college of pharmacy shall be such as shall meet the standard requirements as are now, or hereafter may be, recommended by the recognized accrediting agency for schools or colleges of pharmacy, and the usual degrees shall be granted for completion of courses in pharmacy.

The board of trustees may establish professional-technical and other courses or programs, as it may deem necessary, and such courses or programs may be given or conducted on or off campus, or in night schools, summer schools, or by extension courses.

**History.**

1963, ch. 12, § 2, p. 23; am. 1965, ch. 182, § 1, p. 380; am. 1983, ch. 155, § 4, p. 431; am. 1996, ch. 269, § 1, p. 872; am. 1999, ch. 329, § 33, p. 852.

**33-3003. Body politic and corporate — Board of trustees.** — The Idaho State University is hereby declared to be a body politic and corporate, with its own seal and having power to sue and be sued in its own name. The general supervision, government and control of the Idaho State University is vested in the state board of education, which shall act as the board of trustees of the Idaho State University.

**History.**

1963, ch. 12, § 3, p. 23.

**STATUTORY NOTES**

**Cross References.**

State board of education, § 33-101.

**JUDICIAL DECISIONS**

Analysis

Immunity from suit.

Insurance policies.

**Immunity from Suit.**

The state did not waive its **Eleventh Amendment** immunity as to Idaho State University by this section and § 33-3803. **Ferguson v. Greater Pocatello Chamber of Commerce, Inc.**, 647 F. Supp. 190 (D. Idaho 1985), *aff'd*, 848 F.2d 976 (9th Cir. 1988).

**Insurance Policies.**

Idaho State University (ISU) was the sole insured party under disputed insurance policy; neither the state of Idaho nor the bureau of risk management were named insureds in the policy and they were not the same legal entity as ISU, which enjoys its own independent legal status. **State v. Continental Cas. Co.**, 121 Idaho 938, 829 P.2d 528 (1992).

**Cited in:** *State & Idaho State Univ. v. Continental Cas. Co.*, 126 Idaho 178, 879 P.2d 1111 (1994).

## **RESEARCH REFERENCES**

**A.L.R.** — Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning. 33 A.L.R.3d 703.

Tort liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork and manual or vocational training. 35 A.L.R.3d 758.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes. 36 A.L.R.3d 361.

Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students. 36 A.L.R.3d 480.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes. 37 A.L.R.3d 712.

Tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds. 37 A.L.R.3d 738.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students. 23 A.L.R.5th 1.

**33-3004. Organization, meetings and proceedings of board.** — The board of trustees, at its first meeting and annually thereafter, shall organize by electing a chairman, a vice-chairman and a secretary. A majority of the board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. No member of the board shall participate in any proceeding in which he has a pecuniary interest. No vacancy on the board shall impair the right of the remaining trustees to exercise all the powers of the board. Every vote and official act shall be entered of record. The state treasurer shall serve as treasurer of the board. It shall be the duty of the secretary to keep an accurate and detailed account of the doings of the board.

**History.**

1963, ch. 12, § 4, p. 23.

**STATUTORY NOTES**

**Cross References.**

Meetings of state board of education, § 33-104.

State treasurer, § 67-1201 et seq.



**33-3005. Title to property — Acquiring, selling or exchanging property.** — All rights and title to property, real or personal, belonging to or vested in the Idaho State University are hereby vested in its board of trustees and their successors. The board of trustees is empowered to acquire, by purchase or exchange, any property which in the judgment of the board is needful for the operation of the Idaho State University, and to dispose of, by sale or exchange, any property which in the judgment of the board is not needful for the operation of the said university.

**History.**

1963, ch. 12, § 5, p. 23.

**33-3006. General powers of board of trustees.** — The board of trustees of the Idaho State University shall have the following powers:

1. To adopt rules and regulations for its own government and for that of the university.

2. To employ a president of the university and, with his advice, to appoint such assistants, deans, instructors, specialists and other employees as are required for the operation of the university; to fix salaries and prescribe duties; and to remove the president or other employees in accordance with the policies and rules of the state board of education.

3. With the advice of the president, to prescribe the courses and programs of study, the requirements for admission, the time and standard for graduation, and to grant academic degrees to those students entitled thereto.

4. To accept grants or gifts of money, materials or property of any kind from any governmental agency, or from any person, firm or association, on such terms as may be determined by the grantor.

5. To cooperate with any governmental agency, or any person, firm or association in the conduct of any educational program, to accept grants or gifts from any source for the conduct of such program; and to conduct such program on or off campus.

6. To employ architects or engineers in planning the construction, remodeling or repair of any building or property and, whenever no other agency is designated by law so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof.

7. To have at all times, general supervision and control of all property, real and personal, appertaining to the university, and to insure the same.

**History.**

1963, ch. 12, § 6, p. 23; am. 2005, ch. 65, § 2, p. 228.

**STATUTORY NOTES**

**Cross References.**

Bonds, issuance under Educational Institutions Act of 1935, § 33-3801 et seq.

Contracts for housing facilities at state institutions, § 33-3701.

Permanent building fund, § 57-1101 et seq.

**33-3007. Tuition not required — Exceptions. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1963, ch. 12, § 7, p. 23, was repealed by S.L. 1970, ch. 226, § 2. For present comparable law, see § 33-3717A.

**33-3008. Board may maintain training school. [Repealed.]**

Repealed by S.L. 2011, ch. 90, § 1, effective July 1, 2011.

**History.**

1963, ch. 12, § 8, p. 23.

**33-3009. Sectarian tests prohibited.** — No religious or sectarian test shall be applied in the admission of students, nor in the selection of instructors or other personnel of the university.

**History.**

1963, ch. 12, § 9, p. 23.

**STATUTORY NOTES**

**Cross References.**

Religious tests, qualifications, and teachings prohibited, Idaho **Const., Art. IX, § 6.**

**33-3010. Funds, property and obligations transferred.** — All of the funds and moneys in the dormitory fund and dining hall fund, including any revolving fund, of the Idaho State College, as the same are authorized by sections 33-3701 — 33-3711[, Idaho Code], and all of the unexpended funds heretofore allocated and appropriated to the Idaho State College for the purposes specified therein, and all of the educational, charitable endowment or other endowment funds, holdings, rights, privileges and immunities of the Academy of Idaho, the Idaho Technical Institute, the Southern Branch of the University of Idaho, and the Idaho State College, including the institutions' endowment funds referred to in sections 66-1103 — 66-1107[, Idaho Code], and any allocations or appropriations from the normal school fund for the use of the department of education at the Idaho State College, are hereby transferred to, vested in and continued in the Idaho State University and placed under the control of its board of trustees, and appropriated for expenditure by it and shall be paid out by the state treasurer in the manner provided by the constitution and laws of the state of Idaho. All of the property, real and personal, and all of the obligations, legal or moral, of the Idaho State College, are hereby vested in, or shall become the obligations of, the Idaho State University.

**History.**

1963, ch. 12, § 10, p. 23.

**STATUTORY NOTES**

**Cross References.**

Bursar at state educational institutions, §§ 33-3712 and 33-3713.

Dining halls at state educational institutions, § 33-3704 et seq.

Dormitory fund, § 33-3702.

Gifts, legacies and devises for state educational institutions, § 33-3714.

State treasurer, § 67-1201 et seq.

**Compiler's Notes.**

The dining hall fund, referred to near the beginning of this section, was repealed by S.L. 1965, Chapter 124, which placed operation of dining halls under the supervision of the individual state institutions.

The bracketed insertions were added by the compiler to conform to the statutory citation style.

The normal school fund, referred to near the middle of the section, was created by former § 33-3301, which was repealed by S.L. 1998, ch. 256, § 25. Earnings from the normal school income fund now are appropriated to the department of education at Idaho state university. See §§ 33-3301B and 33-3304.



**33-3011. Existing statutes to be construed.** — Wherever the name Academy of Idaho, Idaho Technical Institute, Southern Branch of the University of Idaho, or Idaho State College, shall appear in any statute, such statute hereby is amended to read Idaho State University as fully and completely as though the said name on said statute was specifically amended herein, and all such statutes shall be construed to refer to and mean the Idaho State University.

**History.**

1963, ch. 12, § 11, p. 23.

**STATUTORY NOTES**

**Effective Dates.**

Section 13 of S.L. 1963, ch. 12, provided that the act should take effect on and after July 1, 1963.

**33-3012. State museum of natural history.** — (1) Recognizing the importance of our natural heritage to the citizens of the state of Idaho, and the need for a state museum of natural history which would preserve and interpret natural history objects and which would provide educational services about our natural heritage for both residents and visitors through its own facilities and by supporting and encouraging local and municipal natural history museums throughout the state of Idaho, there is hereby created and established at Idaho State University a state museum of natural history to be known as the Idaho museum of natural history, where tangible objects and documents reflecting our natural heritage may be collected, preserved, studied, interpreted, and displayed for educational and cultural purposes.

(2) The Idaho museum of natural history may receive gifts, contributions, and donations of all kinds for the purpose of support and maintenance of the museum, and may receive tangible objects and specimens for the development of collections, educational programs and exhibits.

**History.**

I.C., § 33-3012, as added by 1986, ch. 239, § 1, p. 651.



## **CHAPTER 31**

### **LEWIS-CLARK STATE COLLEGE**

#### **Section.**

33-3101. Establishment of school.

33-3102. Board of trustees.

33-3103. Meetings, officers, and proceedings of board.

33-3104. General powers and duties of board.

33-3105. Control of funds — Disbursements. [Repealed.]

33-3106. President and other teachers, officers, and employees — Salaries and duties — Removal.

33-3107. Course of study, certificates, and diplomas.

33-3108 — 33-3112. Textbooks — Admission of students — Courses of instruction. [Repealed.]

33-3113. Sectarian tests prohibited.

33-3114. Transfer and control of funds.

33-3115. Transfer of property. [Repealed.]

33-3116. Construction of references to Lewiston State Normal School.

33-3117, 33-3118. Construction of references to Northern Idaho College of Education — Separability. [Repealed.]

**33-3101. Establishment of school.** — An institute of higher education for the state of Idaho is hereby established in the city of Lewiston, in the county of Nez Perce, to be called the Lewis-Clark State College, heretofore called the Lewis-Clark Normal School, the purposes of which shall be the offering and the giving of instruction in college courses in the sciences, arts and literature, professional, technical, and courses or programs of higher education as are usually included in colleges and universities leading to the granting of appropriate collegiate degrees as approved by the state board of education.

### **History.**

1893, p. 6, § 1; reen. 1899, p. 164, § 1; R.C., § 500; reen. C.L., § 500; C.S., § 1080; I.C.A., § 32-2501; am. 1947, ch. 99, § 2, p. 182; am. 1955, ch. 76, § 1, p. 147; am. 1963, ch. 76, § 1, p. 271; am. 1971, ch. 44, § 1, p. 92; am. 1999, ch. 329, § 34, p. 852; am. 2020, ch. 98, § 1, p. 257.

## **STATUTORY NOTES**

### **Cross References.**

Appropriation for Lewis-Clark State College, § 33-3302.

Fees at state colleges and universities, § 33-3717A.

School under supervision of state board of education and board of regents of the University of Idaho, § 33-101.

### **Amendments.**

The 2020 amendment, by ch. 98, substituted “instruction in college courses in the sciences, arts and literature, professional, technical, and courses or programs of higher education as are usually included in colleges and universities leading to the granting of appropriate collegiate degrees as approved by the state board of education” for “instruction in four (4) year college courses in science, arts and literature, and such courses or programs as are usually included in liberal arts colleges leading to the granting of the degree of Bachelor, upon completion of such courses or programs as have been approved by the state board of education” at the end of the first

paragraph; and deleted the former second paragraph, which read: “The board of trustees may also establish educational, professional-technical and other courses or programs of less than four (4) years, as it may deem necessary, and such courses or programs may be given or conducted on or off campus, or in night school, summer schools, or by extension courses.”

## **JUDICIAL DECISIONS**

**Cited in:** *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

**33-3102. Board of trustees.** — The Lewis-Clark State College is hereby declared to be a body politic and corporate, with its own seal and having power to sue and be sued in its own name. The general supervision, government and control of the Lewis-Clark State College is vested in the state board of education, which shall act as the board of trustees of the Lewis-Clark State College.

**History.**

1893, p. 6, § 2; reen. 1899, p. 164, § 2; 1899, p. 369, § 1; R.C., § 501; 1913, ch. 77, §§ 1, 3, p. 328; C.L., § 501; C.S., § 1081; I.C.A., § 32-2502; am. 1947, ch. 99, § 3, p. 182; am. 1971, ch. 44, § 2, p. 92.

**STATUTORY NOTES**

**Cross References.**

Body politic and corporate under Educational Institutions Act of 1935, § 33-3803.

**33-3103. Meetings, officers, and proceedings of board.** — The said board of trustees may conduct its proceeding in such manner as will best conduce to the proper dispatch of business. A majority of the board of trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time[.] No member of said board of trustees shall participate in any proceeding in which he has any pecuniary interest. Every vote and official act of the said board of trustees shall be entered of record. No vacancy in the board of trustees shall impair the right of the remaining trustees to exercise all the powers of the said board of trustees. At their first meeting, and annually thereafter, the said board of trustees shall elect from their number a chairman, a vice-chairman and a secretary. The state treasurer shall be treasurer of said board of trustees. It shall be the duty of the secretary to keep an accurate and detailed account of the doings of the board.

**History.**

1893, p. 6, § 3; reen. 1899, p. 164, § 3; reen. R.C. & C.L., § 502; C.S., § 1082; I.C.A., § 32-2503; am. 1971, ch. 44, § 3, p. 92.

**STATUTORY NOTES**

**Cross References.**

Meetings of state board of education, § 33-104.

State treasurer, § 67-1201 et seq.

**Compiler's Notes.**

The bracketed period was inserted at the end of the second sentence because it was inadvertently deleted by S.L. 1971, Chapter 44.



**33-3104. General powers and duties of board.** — All rights and title to property, real or personal, belonging to or vested in the Lewis-Clark State College are hereby vested in its board of trustees and their successors. The board of trustees is empowered to acquire, by purchase or exchange, any property which in the judgment of the board is needful for the operation of the Lewis-Clark State College; and to dispose of, by sale or exchange, any property which in the judgment of the board is not needful for the operation of the college.

The board of trustees of the Lewis-Clark State College shall have the following powers:

1. To adopt rules and regulations for its own government and for that of the college.
2. To accept grants or gifts of money, materials or property of any kind from any governmental agency, or from any person, firm or association, on such terms as may be determined by the grantor.
3. To cooperate with any governmental agency, or any person, firm or association in the conduct of any educational program, to accept grants or gifts from any source for the conduct of such program; and to conduct such program on or off campus.
4. To employ architects or engineers in planning the construction, remodeling or repair of any building or property, and whenever no other agency is designated by law to do so, to let contracts for such construction, remodeling or repair and to supervise the work thereof.
5. To have at all times, general supervision and control of all property, real or personal, appertaining to the college, and to insure the same.

**History.**

1893, p. 6, § 4; reen. 1899, p. 164, § 4; reen. R.C. & C.L., § 503; C.S., § 1083; I.C.A., § 32-2504; am. 1971, ch. 44, § 4, p. 92.

**STATUTORY NOTES**

**Cross References.**

Contract for housing facilities at state institutions, § 33-3701.

Permanent building fund, § 57-1101 et seq.

**33-3105. Control of funds — Disbursements. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1893, § 5, p. 6; 1899, p. 164, § 5; R.C. & C.L., § 504; C.S., § 1084; 1947, ch. 99, § 4, was repealed by S.L. 1971, ch. 44, § 10.

**33-3106. President and other teachers, officers, and employees — Salaries and duties — Removal.** — The board of trustees shall have power to employ a president of the college and, with his advice, to appoint such assistants, deans, instructors, specialists and other employees as are required for the operation of the college; to fix salaries and to prescribe duties and to remove the president or other employees in accordance with the policies and rules of the state board of education.

**History.**

1893, p. 6, § 7; reen. 1899, p. 164, § 7; reen. R.C. & C.L., § 506; C.S., § 1085; I.C.A., § 32-2506; am. 1947, ch. 99, § 5, p. 182; am. 1971, ch. 44, § 5, p. 92.

**RESEARCH REFERENCES**

**A.L.R.** — Elements and measure of damages in action by schoolteacher for wrongful discharge. [22 A.L.R.3d 1047](#).

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. [78 A.L.R.3d 19](#).

**33-3107. Course of study, certificates, and diplomas.** — It shall be the duty of the board of trustees, with the advice of the president, to prescribe the courses and programs of study, the requirements for admission, the time and standard for graduation, and to grant academic degrees to those students entitled thereto.

**History.**

1893, p. 6, § 8; reen. 1899, p. 164, § 8; reen. R.C. & C.L., § 507; C.S., § 1086; I.C.A., § 32-2507; am. 1971, ch. 44, § 6, p. 92.

**33-3108 — 33-3112. Textbooks — Admission of students — Courses of instruction. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1893, p. 6, §§ 9 to 13; 1899, p. 164, §§ 9 to 13; R.C. & C.L., §§ 508 to 512; C.S., §§ 1087 to 1091; I.C.A. §§ 32-2508 to 32-2512; 1947, ch. 99, §§ 6 to 9, were repealed by S.L. 1971, ch. 44, § 10.

**33-3113. Sectarian tests prohibited.** — No religious or sectarian test shall be applied in the admission of students, nor in the selection of instructors or other personnel of the college.

**History.**

1893, p. 6, § 17; reen. 1899, p. 164, § 17; reen. R.C. & C.L., § 514; C.S., § 1092; I.C.A., § 32-2513; am. 1947, ch. 99, § 10, p. 182; am. 1971, ch. 44, § 7, p. 92.

**STATUTORY NOTES**

**Cross References.**

Religious tests, qualifications, and teachings prohibited, Idaho **Const., Art. IX, § 6.**

**33-3114. Transfer and control of funds.** — All of the funds and money in the dormitory fund and dining fund, including any revolving fund, of the Lewis-Clark Normal School, as the same is authorized by sections 33-3701 — 33-3711, Idaho Code, and all of the unexpended funds hereto allocated and appropriated to the Lewis-Clark Normal School for the purposes specified therein, and all of the educational or other endowment funds, holdings, rights, privileges and immunities of the Lewiston Normal School, the Northern Idaho College of Education, and the Lewis-Clark Normal School, and any allocations or appropriations from the normal school [income] fund, as provided by section 33-3302, Idaho Code, are hereby transferred to, vested in and continued in the Lewis-Clark State College and placed under the control of its board of trustees, and appropriated for expenditure by it and shall be paid out by the state treasurer in the manner provided by the constitution and laws of the state of Idaho. All of the property, real and personal, and all of the obligations, legal and moral, of the Lewiston Normal School, the Northern Idaho College of Education, and of the Lewis-Clark Normal School, are hereby vested in, or shall become the obligations of, the Lewis-Clark State College.

**History.**

1947, ch. 99, § 11, p. 182; am. 1971, ch. 44, § 8, p. 92.

**STATUTORY NOTES**

**Cross References.**

Dormitory fund, § 33-3702.

State treasurer, § 67-1201 et seq.

**Compiler's Notes.**

The dining hall fund, referred to near the beginning of this section, was repealed by S.L. 1965, Chapter 124, which placed operation of dining halls under the supervision of the individual state institutions.

The bracketed insertion near the middle of the section was added by the compiler to correct the name of the referenced fund. See § 33-3301B.



**33-3115. Transfer of property. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1947, ch. 99, § 14, was repealed by S.L. 1971, ch. 44, § 10.

**33-3116. Construction of references to Lewiston State Normal School.** — Wherever the name Lewiston Normal School, or Northern Idaho College of Education, or Lewis-Clark Normal School, shall appear in any statute, such statute is hereby amended to read Lewis-Clark State College as fully and completely as though the said name on said statute was specifically amended therein, and all such statutes shall be construed to refer to and mean Lewis-Clark State College.

**History.**

1947, ch. 99, § 17, p. 182; am. 1971, ch. 44, § 9, p. 92.

**STATUTORY NOTES**

**Effective Dates.**

Section 11 of S.L. 1971, ch. 44 provided that this act should be in full force and effect on and after July 1, 1971.

**33-3117, 33-3118. Construction of references to Northern Idaho College of Education — Separability. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1955, ch. 76, § 2, and S.L. 1947, ch. 99, § 18 respectively, were repealed by S.L. 1971, ch. 44, § 10.



## **CHAPTER 32**

### **SOUTHERN IDAHO COLLEGE OF EDUCATION**

Section.

33-3201. Declaration of policy. [Repealed.]

33-3202. Title to property.

33-3203 — 33-3206. Power to lease or sell property — Terms and conditions of the lease or sale — Excluded property. [Repealed.]

33-3207. Conflict.

**33-3201. Declaration of policy. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1957, ch. 30, § 1, p. 46, was repealed by S.L. 1969, ch. 417, § 1.

**33-3202. Title to property.** — All the rights, powers, duties, and title to real estate or personal property belonging to or vested in said Southern Idaho College of Education are hereby vested in the state board of land commissioners and their successors in office with full power vested in the state board of land commissioners to lease or sell such property in their name and in the name of the state of Idaho.

**History.**

1957, ch. 30, § 2, p. 46.

**STATUTORY NOTES**

**Cross References.**

State land board, Idaho **Const., Art. IX, § 7**, and **§ 58-101**.

**33-3203 — 33-3206. Power to lease or sell property — Terms and conditions of the lease or sale — Excluded property. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1957, ch. 30, §§ 3 to 6, were repealed by S.L. 1969, ch. 417, § 1.



**33-3207. Conflict.** — All statues [statutes] and laws of the state of Idaho that may conflict with this act shall be inapplicable.

**History.**

1957, ch. 30, § 7, p. 46.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed word “statutes” was inserted by the compiler to supply the intended term.

The words “this act” refer to S.L. 1957, Chapter 30, presently compiled as § 33-3202 and this section.

Section 8 of S.L. 1957, ch. 30 read: “The provisions of this act are hereby declared to be separable and if any section, clause or phrase thereof is hereafter declared unconstitutional, the same shall not affect the validity of the remaining portions of this act.”

**Effective Dates.**

Section 10 of S.L. 1957, ch. 30 declared an emergency. Approved February 12, 1957.



## **CHAPTER 33**

### **NORMAL SCHOOLS — FEDERAL EDUCATIONAL AID**

#### **Section.**

33-3301. Normal school permanent endowment fund.

33-3301A. Normal school earnings reserve fund.

33-3301B. Normal school income fund.

33-3302. Appropriation for Lewis-Clark State College.

33-3303. Appropriation for support and maintenance of an Albion Normal School Field Institute.

33-3304. Appropriation for the department of education at Idaho State University.

33-3305. Appropriation for asbestos removal and building demolition of all Albion state normal school buildings not of practical value to the city of Albion.

**33-3301. Normal school permanent endowment fund.** — (1) There is established in the state treasury the normal school permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

(a) Proceeds of the sale of any of the lands granted to the state of Idaho by the United States government under the provisions of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, known as normal school endowment lands, and those granted in lieu of such;

(b) Proceeds of royalties arising from the extraction of minerals on normal endowment school lands owned by the state; and

(c) Moneys allocated from the normal school earnings reserve fund.

(2) Provided however, that proceeds from the sale of normal school endowment lands may be first deposited into the land bank fund established in [section 58-133, Idaho Code](#), to be used to acquire other lands within the state for the benefit of endowment beneficiaries. If the land sale proceeds are not used to acquire other lands in accordance with [section 58-133, Idaho Code](#), the proceeds shall be deposited into the normal school permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the investment of the normal school permanent endowment fund shall be distributed according to the provisions of [section 57-723A, Idaho Code](#).

#### **History.**

[I.C., § 33-3301](#), as added by 1998, ch. 256, § 26, p. 825.

### **STATUTORY NOTES**

#### **Cross References.**

Endowment fund investment board, § 57-718.

Normal school earnings reserve fund, § 33-3301A.

State board of land commissioners, Idaho [Const., Art. IX, § 7](#), and [§ 58-101](#).

### **Prior Laws.**

Former § 33-3301, which comprised 1905, p. 393, §§ 1, 2; R.C., § 17, subd. 66; reen. C.L. 43:1; C.S., § 1107; I.C.A., § 32-2701; am. 1947, ch. 99, § 15, p. 182; am. 1947, ch. 100, § 14, p. 190; am. 1957, ch. 318, § 1, p. 678; am. 1971, ch. 43, § 1, p. 91; am. 1994, ch. 180, § 51, p. 420; am. 1994, ch. 222, § 1, p. 708, was repealed by S.L. 1998, ch. 256, § 25.

### **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part, repealed and added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of [Article IX of the Constitution](#) of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-3301A. Normal school earnings reserve fund.** — (1) There is established in the state treasury the normal school earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund shall consist of the following:

(a) All earnings of the normal school permanent endowment fund; (b) Proceeds of the sale of timber growing on normal school endowment lands; (c) Proceeds of leases of normal school endowment lands; (d) Proceeds of interest upon deferred payments on normal school endowment lands or timber on those lands; and (e) All other proceeds received from the use of normal school endowment lands and not otherwise designated for deposit in the normal school permanent endowment fund.

(2) Moneys shall be distributed out of the normal school earnings reserve fund only to support the beneficiaries of the normal school endowment, including distributions by the state board of land commissioners to the normal school permanent endowment fund and the normal school income fund; provided, that funds shall not be appropriated by the legislature from the normal school earnings reserve fund except to pay for administrative costs incurred managing the assets of the normal school endowment including, but not limited to, real property and monetary assets.

**History.**

I.C., § 33-3301A, as added by 1998, ch. 256, § 27, p. 825.

**STATUTORY NOTES**

**Cross References.**

Endowment fund investment board, § 57-718.

Normal school income fund, § 33-3301B.

Normal school permanent endowment fund, § 33-3301.

State board of land commissioners, Idaho [Const., Art. IX, § 7](#), and [§ 58-101](#).

### **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which, in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of [Article IX of the Constitution](#) of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-3301B. Normal school income fund.** — There is established in the state treasury the normal school income fund. The fund shall consist of all moneys distributed from the normal school earnings reserve fund and from other sources as the legislature deems appropriate. Moneys in the normal school income fund shall be used for the benefit of the beneficiaries of the endowment and distributed to current beneficiaries of the normal school endowment pursuant to legislative appropriation. However, not more than fifty percent (50%) of earnings of the normal school income fund shall ever be appropriated for the support and maintenance of either Lewis-Clark State College or the department of education at Idaho State University.

**History.**

I.C., § 33-3301B, as added by 1998, ch. 256, § 28, p. 825.

**STATUTORY NOTES**

**Cross References.**

Normal school earnings reserve fund, § 33-3301A.

**Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which, in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of **Article IX of the Constitution** of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.



“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-3302. Appropriation for Lewis-Clark State College.** — Fifty percent (50%) of all moneys that now are in or which may hereafter accrue to the normal school income fund are perpetually appropriated and set apart for the support and maintenance of the Lewis-Clark State College, the same to be available for such purpose immediately upon their being credited to the fund.

### **History.**

1905, p. 393, § 6; R.C., § 17, subd. 66; compiled and reen. C.L., 43:2; C.S., § 1108; I.C.A., § 32-2702; am. 1947, ch. 99, § 16, p. 182; am. 1971, ch. 43, § 2, p. 91; am. 1994, ch. 222, § 2, p. 708; am. 1998, ch. 256, § 29, p. 825.

## **STATUTORY NOTES**

### **Cross References.**

Normal school income fund, § 33-3301B.

### **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of **Article IX of the Constitution** of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-3303. Appropriation for support and maintenance of an Albion Normal School Field Institute.** — Subject to legislative approval by adoption of a concurrent resolution in both houses approving a department of parks and recreation memorandum of understanding negotiated between the Idaho department of parks and recreation and the city of Albion and other public or private agencies interested in cooperative management of an Albion Normal School Field Institute within an Albion State Normal School state park complex, the appropriately designated state agency shall receive three percent (3%) of all moneys that are now in or which may hereafter accrue to the normal school income fund, the same to be set apart for support and maintenance of the Albion Normal School Field Institute. The memorandum of understanding negotiated by the Idaho department of parks and recreation and the city of Albion and other public or private agencies interested in cooperative management of an Albion Normal School Field Institute within an Albion State Normal School state park complex shall be negotiated in accordance with guidelines established in the Idaho department of parks and recreation's Albion Campus General Development Plan.

**History.**

**I.C., § 33-3303**, as added by 1994, ch. 222, § 4, p. 708; am. 1998, ch. 256, § 30, p. 825.

**STATUTORY NOTES**

**Cross References.**

Normal school income fund, § 33-3301B.

Department of parks and recreation, § 67-4218 et seq.

**Compiler's Notes.**

For additional information about the Albion state normal school, see <http://albioncampusretreat.com/history>.

**Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of **Article IX of the Constitution** of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-3304. Appropriation for the department of education at Idaho State University.** — Fifty percent (50%) of all the moneys that now are in or which may hereafter accrue to the normal school income fund are hereby appropriated and set apart for the support and maintenance of the department of education at Idaho State University, the same to be available for such purpose immediately upon their being credited to the fund. Should the legislature, by adoption of a concurrent resolution in both houses, approve a memorandum of understanding negotiated by the Idaho department of parks and recreation between the city of Albion and other public or private agencies interested in cooperative management of an Albion Normal School Field Institute within an Albion State Normal School state park complex, the percentage share for the department of education at Idaho State University shall be reduced from fifty percent (50%) to forty-seven percent (47%). In the event that the memorandum of understanding is not approved, section 33-3305, Idaho Code, shall apply.

#### **History.**

I.C., § 33-3304, as added by 1905, p. 393, § 4; R.C., § 17, subd. 66; compiled and reen. C.L., 43:3; C.S., § 1109; I.C.A., § 32-2703; am. 1947, ch. 100, § 15, p. 190; am. 1957, ch. 318, § 2, p. 678; am. 1971, ch. 43, § 3, p. 91; am. and redesisg. 1994, ch. 222, § 3, p. 708; am. 1998, ch. 256, § 31, p. 825.

### **STATUTORY NOTES**

#### **Cross References.**

Normal school income fund, § 33-3301B.

#### **Compiler's Notes.**

For additional information about the Albion state normal school, see <http://albioncampusretreat.com/history>.

#### **Effective Dates.**

S.L. 1998, ch. 256, § 63 provides: “This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided

the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of [Article IX of the Constitution](#) of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

“Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

“Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256, have been met; therefore, that act is effective July 1, 2000.

**33-3305. Appropriation for asbestos removal and building demolition of all Albion state normal school buildings not of practical value to the city of Albion.** — In the event that the memorandum of understanding of section 33-3303, Idaho Code, as negotiated by the Idaho department of parks and recreation between the city of Albion and other public and private agencies interested in cooperative management of an Albion Normal School Field Institute that is within an Albion State Normal School state park complex is not approved by the legislature, separate legislative appropriation by joint finance appropriations committee action shall be given due consideration by the legislature for the express purpose of asbestos removal and building demolition of all campus buildings not of practical value to the city of Albion.

**History.**

I.C., § 33-3305, as added by 1994, ch. 222, § 5, p. 708.

**STATUTORY NOTES**

**Compiler's Notes.**

For information in the Albion state normal school, see <http://albioncampusretreat.com/history>.





**CHAPTER 34**  
**IDAHO BUREAU OF EDUCATIONAL SERVICES FOR**  
**THE DEAF AND THE BLIND ACT OF 2009**

Section.

33-3401. Short title.

33-3402. Definitions.

33-3403. Bureau of educational services for the deaf and the blind established — Goal.

33-3404. Board of directors.

33-3405. Board of directors to appoint administrator — Designation of assistants — Duties.

33-3406. Powers and duties of the board of directors.

33-3407. Governmental entity — Liability — Insurance.

33-3408. Expenditures — Budget — Funding.

33-3409. Rules.

33-3410. Reporting deaf and blind pupils.

33-3411. Acquisition of and title to property.

33-3412. Sick leave transferred for employees of Idaho school for the deaf and the blind to Idaho bureau of educational services for the deaf and the blind.

33-3413. Sectarian tests prohibited.

33-3414. General fund contingency reserve.

**33-3401. Short title.** — This chapter shall be known and may be cited as the “Idaho Bureau of Educational Services for the Deaf and the Blind Act of 2009.”

**History.**

I.C., § 33-3401, as added by 2009, ch. 168, § 4, p. 502.

**STATUTORY NOTES**

**Prior Laws.**

Former chapter 34 of title 33, which consisted of the following former sections, was repealed by S.L. 1963, ch. 102, § 9: 33-3401. (1909, p. 379, § 1; modified by 1911, ch. 42, p. 97; compiled and reen. C.L., 46:1; C.S., § 1122; I.C.A., § 32-2901; am. 1961, ch. 26, § 1, p. 34).

33-3402. (1909), p. 379, § 2; compiled and reen. C.L. 46:2; C.S., § 1123; I.C.A., § 32-2902).

33-3403. (1907, p. 240, § 2; reen. R.C., § 801; am. 1909, p. 379, § 3; reen. C.L. 46:3; C.S., § 1124; I.C.A., § 32-2903).

33-3404. (1907, p. 240, § 3; reen. R.C., § 802; reen. 1909, p. 379, § 4; reen. C.L., § 46:4; C.S. § 1125; I.C.A., § 32-2904).

33-3405. (1907, p. 240, § 4; reen. R.C., § 803; am. 1909, p. 379, § 5; reen. C.L. 46:5; C.S., § 1126; I.C.A., § 32-2905).

33-3406. (1907, p. 240, § 5; reen. R.C., § 804; reen. 1909, p. 379, § 6; reen. C.L. 46:6; C.S., § 1127; I.C.A., § 32-2906).

Another former chapter 34 of title 33, which comprised the following sections, was repealed by S.L. 2009, ch. 168, § 1.

33-3401. Establishment of school for the deaf and blind. [1963, ch. 102, § 1, p. 320; am. 1990, ch. 237, § 2, p. 674; am. 2006, ch. 383, § 1, p. 1201.]

33-3402. Body politic and corporate-Board of trustees. [1963, ch. 102, § 2, p. 320; am. 1990, ch. 237, § 3, p. 674.]

33-3403. Organization, meetings and proceedings of the board. [1963, ch. 102, § 3, p. 320.]

33-3404. Title to property-Acquiring, selling or exchanging property. [1963, ch. 102, § 4, p. 320; am. 1990, ch. 237, § 4, p. 674.]

33-3405. General powers of the board. [1963, ch. 102, § 5, p. 320; am. 1990, ch. 237, § 5, p. 674; am 2005, ch. 65, § 3, p. 228; am. 2005, ch. 258, § 1, p. 794.]

33-3406. Sectarian tests prohibited. [1963, ch. 102, § 6, p. 320.]

33-3407. Definition of the deaf and the blind-Examination of applicants-Admission and release of pupils. [1963, ch. 102, § 7, p. 320; am. 2006, ch. 383, § 2, p. 1201; am. 2007, ch. 90, § 16, p. 246.]

33-3408. Reporting deaf and blind pupils. [1963, ch. 102, § 8, p. 320; am. 1990, ch. 237, § 6, p. 674.]

33-3409. General fund contingency reserve. [[I.C., § 33-3409](#), as added by 2002, ch. 334, § 1, p. 949.]

**33-3402. Definitions.** — As used in this chapter:

(1) “Blind or visually impaired” means impacted by an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness.

(2) “Board of directors,” also referred to in this chapter as “the board,” means the board of directors of the Idaho bureau of educational services for the deaf and the blind as such board is established in [section 33-3404, Idaho Code](#).

(3) “Bureau” means the Idaho bureau of educational services for the deaf and the blind as created in [section 33-3403, Idaho Code](#).

(4) “Deaf or hard of hearing” means impacted by a loss of hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance, or impacted by a hearing loss that is so severe that the child is not able to process linguistic information through hearing, with or without amplification, that adversely affects a child’s educational performance.

(5) “Idaho school for the deaf and the blind” means the campus program used to provide residential and day campus instruction and services to deaf or hard of hearing and/or blind or visually impaired students.

(6) “Outreach services” means off-campus statewide supplemental services provided by the Idaho bureau of educational services for the deaf and the blind to school districts, students and families.

(7) “Sensory impairment” means an impairment of vision or hearing, or both.

(8) “Specialized/certified personnel” means all personnel nationally certified and/or certified by the state of Idaho as required by applicable law to provide services and instruction to students who are deaf or hard of hearing and/or blind or visually impaired, including, but not limited to, certified teachers of the deaf, certified teachers of the visually impaired, certified interpreters, certified orientation and mobility specialists, speech language pathologists, and certified low vision therapists.

(9) “State board” means the Idaho state board of education.

(10) “Student” means an individual who is deaf or hard of hearing and/or blind or visually impaired and who qualifies for educational services as provided for in this chapter pursuant to eligibility criteria set forth in the Idaho standards for infants, toddlers, children, and youth who are deaf or hard of hearing as incorporated by reference in [IDAPA 08.02.03.004.08](#) or are blind or visually impaired as incorporated by reference in [IDAPA 08.02.03.004.09](#), in effect on January 1, 2009.

(11) “Supplemental services” means services provided to deaf or hard of hearing and/or blind or visually impaired students and their families, in addition to and in support of services the student may receive from his or her school district. Such services may include assessment, consultation and direct instruction.

### **History.**

[I.C., § 33-3402](#), as added by 2009, ch. 168, § 4, p. 502; am. 2010, ch. 191, § 3, p. 405; am. 2020, ch. 12, § 3, p. 19.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-3402 was repealed. See Prior Laws, § 33-3401.

Another former § 33-3402 was repealed. See Prior Laws, § 33-3401.

### **Amendments.**

The 2010 amendment, by ch. 191, in subsection (10), substituted “incorporated by reference in [IDAPA 08.02.03.004.08](#) or are blind or visually impaired as incorporated by reference in [IDAPA 08.02.03.004.09](#),” for “incorporated by reference in [IDAPA 08.02.03.004.08](#) and [08.02.03.004.09](#).”

The 2020 amendment, by ch. 12, in subsection (4), substituted “impacted by a loss of hearing” for “impacted by an impairment in hearing” near the beginning and substituted “hearing loss that is so severe that the child is not able to process” for “hearing impairment that is so severe that the child is impaired in processing” near the middle.

**33-3403. Bureau of educational services for the deaf and the blind established — Goal.** — (1) There is hereby established the Idaho bureau of educational services for the deaf and the blind, a provider of supplemental services for students who are deaf or hard of hearing and/or blind or visually impaired. The Idaho bureau of educational services for the deaf and the blind may operate a school for the deaf and the blind at which it shall provide residential and day campus programs. The Idaho bureau of educational services for the deaf and the blind may also operate an outreach program intended to provide services to students outside the campus area, as well as early intervention and family consultation.

(2) The goal of the Idaho bureau of educational services for the deaf and the blind is to assist school districts and state agencies in providing accessibility, quality and equity to students in the state with sensory impairments through a continuum of service and placement options.

**History.**

I.C., § 33-3403, as added by 2009, ch. 168, § 4, p. 502.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-3403 was repealed. See Prior Laws, § 33-3401.

Another former § 33-3403 was repealed. See Prior Laws, § 33-3401.

**33-3404. Board of directors.** — (1) The Idaho bureau of educational services for the deaf and the blind shall be governed by a board of directors which shall be responsible for development and oversight.

(2) The board of directors shall be comprised of eight (8) members as follows:

- (a) One (1) member shall be specialized/certified personnel appointed by the governor for a three (3) year term;
- (b) One (1) member shall be a director of special education appointed by the governor for a three (3) year term;
- (c) Two (2) members shall be citizens at-large appointed by the governor, each for three (3) year terms;
- (d) One (1) member shall be a parent of a student who is deaf or hard of hearing or blind or visually impaired appointed by the governor for a three (3) year term;
- (e) One (1) member shall be a citizen who is deaf or hard of hearing appointed by the governor for a three (3) year term;
- (f) One (1) member shall be a citizen who is blind or visually impaired appointed by the governor for a three (3) year term; and
- (g) The state superintendent of public instruction shall be chair of the board and shall serve concurrently with the term of office to which the state superintendent is elected.

(3) For purposes of establishing staggered terms of office, the initial term of office for the citizen who is blind or visually impaired and the parent of a student who is deaf or hard of hearing or blind or visually impaired shall be one (1) year, and thereafter shall be three (3) years. The initial term of office for the two (2) members at-large and for the director of special education shall be two (2) years, and thereafter shall be three (3) years. The initial term of office for the citizen who is deaf or hard of hearing and for the specialized/certified personnel shall be three (3) years, and thereafter shall be three (3) years.



(4) No voting member shall serve for more than two (2) consecutive full terms. Members of the board who are appointed to fill vacancies that occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

**History.**

I.C., § 33-3404, as added by 2009, ch. 168, § 4, p. 502.

**STATUTORY NOTES**

**Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

**Prior Laws.**

Former § 33-3404 was repealed. See Prior Laws, § 33-3401.

Another former § 33-3404 was repealed. See Prior Laws, § 33-3401.

**33-3405. Board of directors to appoint administrator — Designation of assistants — Duties.** — (1) The board of directors for the Idaho bureau of educational services for the deaf and the blind shall appoint a person to serve as an administrator to the bureau.

(2) The administrator shall designate, by and with the advice and consent of the board of directors, such assistants, instructors, specialists and other employees as may be necessary to properly carry out the provisions of this chapter.

(3) The administrator shall coordinate all efforts in education for the deaf and the blind approved by the board of directors and shall prepare such reports concerning the education for the deaf and the blind in the state as the board of directors may require.

(4) The administrator shall make an annual report of the bureau's activities to the state board of education at a time and in a format designated by the state board of education.

**History.**

I.C., § 33-3405, as added by 2009, ch. 168, § 4, p. 502.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-3405 was repealed. See Prior Laws, § 33-3401.

Another former § 33-3405 was repealed. See Prior Laws, § 33-3401.

**33-3406. Powers and duties of the board of directors.** — The board of directors for the Idaho bureau of educational services for the deaf and the blind shall have the following powers and duties:

(1) Recommend policies to be established by rule of the state board of education for effecting the purposes of this chapter.

(2) Operate a school for the deaf and the blind, including but not limited to:

(a) With the advice of the administrator, prescribe the course of study, the textbooks to be used, and for those pupils who complete the requirements for grade twelve (12), the time and standard of graduation;

(b) Upon advice and recommendation from the administrator that any pupil has ceased to make progress, or is no longer being benefited by the school's services, approve release of such pupil from the school and/or discontinue school services;

(c) Maintain general supervision and control of all property, real and personal, appertaining to the school, and to ensure [insure] the same;

(d) Employ architects or engineers as necessary in planning the construction, remodeling or repair of any building and, whenever no other agency is designated so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof; and

(e) Provide for the conveyance of pupils to and from the school.

(3) Employ or contract with outreach and other staff as necessary. The Idaho bureau of educational services for the deaf and the blind shall be exempt from the provisions of sections 33-513, 33-514, 33-514A, 33-515 and 33-515A, Idaho Code, and shall be exempt from chapter 53, title 67, Idaho Code. At the discretion of the board, all employees of the Idaho bureau of educational services for the deaf and the blind or a school for the deaf and the blind eligible for benefits may be permitted to elect to receive their salary on a year-round basis. Such a payment schedule shall not be considered a guarantee of employment.

(4) Purchase such supplies and equipment as are necessary to implement the provisions of this chapter, which purchases shall be exempt from the state procurement act in chapter 92, title 67, Idaho Code.

(5) Enter into contracts with any other governmental or public agency whereby the bureau agrees to render services to or for such agency in exchange for a charge reasonably calculated to cover the costs of rendering such service.

(6) Accept, receive and utilize any gifts, grants or funds and personal and real property that may be donated to it for the fulfillment of the purposes outlined in this chapter.

(7) Obtain and maintain facilities to house operations of outreach or supplemental services as needed.

(8) Manage the moneys disbursed to the bureau from any and all sources.

(9) Acquire, by purchase, exchange, or lease any property which in the judgment of the board is needed for the operation of the Idaho bureau of educational services for the deaf and the blind, including a school for the deaf and the blind, and to lease, dispose of, by sale or exchange, any property which in the judgment of the board is not needed for the operation of the same.

(10) Enter into contracts or agreements as may be necessary to carry out the purposes of this chapter.

### **History.**

**I.C., § 33-3406**, as added by 2009, ch. 168, § 4, p. 502; am. 2016, ch. 289, § 8, p. 793.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-3406 was repealed. See Prior Laws, § 33-3401.

Another former § 33-3406 was repealed. See Prior Laws, § 33-3401.

### **Amendments.**

The 2016 amendment, by ch. 289, substituted “state procurement act in chapter 92, title 67” for “purchasing laws in chapter 57, title 67” in subsection (4).

**Compiler’s Notes.**

The bracketed insertion in paragraph (2)(c) was added by the compiler to supply the probable intended term.

**33-3407. Governmental entity — Liability — Insurance.** — (1) The Idaho bureau of educational services for the deaf and the blind, as provided for in this chapter, is not a single department of state government unto itself, nor is it a part of any of the twenty (20) departments of state government authorized by section 20, article IV, of the constitution of the state of Idaho, or of the departments provided for in section 67-2402, Idaho Code. It is legislative intent that the Idaho bureau of educational services for the deaf and the blind operate and be recognized not as a state agency or department, but as a governmental entity whose creation has been authorized by the state, much in the manner as other single purpose districts. For the purposes of section 59-1302(15), Idaho Code, the Idaho bureau of educational services for the deaf and the blind created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-3622O, Idaho Code, sales to or purchases by the Idaho bureau of educational services for the deaf and the blind are exempt from payment of the sales and use tax. The Idaho bureau of educational services for the deaf and the blind, its employees and its board of directors are subject to the following provisions in the same manner as a traditional public school and the board of trustees of a school district:

- (a) Sections 18-1351 through 18-1362, Idaho Code, on bribery and corrupt influence, except as provided by section 33-5204A(2), Idaho Code;
- (b) Chapter 5, title 74, Idaho Code, on prohibitions against contracts with officers;
- (c) Chapter 4, title 74, Idaho Code, on ethics in government;
- (d) Chapter 2, title 74, Idaho Code, on open public meetings; and
- (e) Chapter 1, title 74, Idaho Code, on disclosure of public records.

(2) The Idaho bureau of educational services for the deaf and the blind, its employees and its board of directors are subject to the following provisions:

- (a) Section 33-1216, Idaho Code, on sick and other leave, or the laws, rules and policies of the state of Idaho for sick and other leave as

provided for in chapter 53, title 67, Idaho Code, as determined by the board;

(b) [Section 33-1217, Idaho Code](#), on accumulation of unused sick leave, or the laws, rules and policies of the state of Idaho for accumulation of unused sick leave as provided for in [section 67-5333, Idaho Code](#), as determined by the board;

(c) [Section 33-1218, Idaho Code](#), on sick leave in excess of statutory minimum amounts, or the laws, rules and policies of the state of Idaho for sick leave in excess of statutory minimum amounts as provided for in [section 67-5333, Idaho Code](#), as determined by the board; and

(d) [Section 33-1228, Idaho Code](#), on severance allowance at retirement, or the laws, rules and policies of the state of Idaho for severance allowance at retirement as provided for in [section 67-5333, Idaho Code](#), as determined by the board.

(3) The Idaho bureau of educational services for the deaf and the blind may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and other public schools, including those provided by chapter 9, title 6, Idaho Code.

(4) The Idaho bureau of educational services for the deaf and the blind shall be considered a state department for purposes of risk management and group insurance pursuant to chapter 57, title 67, Idaho Code, and the department of administration shall treat the bureau as such.

(5) It shall be unlawful for:

(a) Any director to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the Idaho bureau of educational services for the deaf and the blind, or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection. The board of directors of the Idaho bureau of educational services for the deaf and the blind may accept and award contracts involving the Idaho bureau of educational services for the deaf and the blind to businesses in which the director or a person related to him by blood or marriage within the

second degree of consanguinity has a direct or indirect interest, provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of the Idaho bureau of educational services for the deaf and the blind for deposit in any bank or trust company, or the lending of moneys by any bank or trust company to the Idaho bureau of educational services for the deaf and the blind, shall not be deemed to be a contract pertaining to the maintenance or conduct of the Idaho bureau of educational services for the deaf and the blind within the meaning of this section; nor shall the payment of compensation by the Idaho bureau of educational services for the deaf and the blind board of directors to any bank or trust company for services rendered in the transaction of any banking business with the Idaho bureau of educational services for the deaf and the blind board of directors be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(b) The board of directors of the Idaho bureau of educational services for the deaf and the blind to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or shall require, the payment or delivery of any Idaho bureau of educational services for the deaf and the blind funds, moneys or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

(6) When any relative of any director, or relative of the spouse of a director related by affinity or consanguinity within the second degree, is to be considered for employment in the Idaho bureau of educational services for the deaf and the blind, such director shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined.

#### **History.**

**I.C., § 33-3407**, as added by 2009, ch. 168, § 4, p. 502; am. 2010, ch. 191, § 4, p. 405; am. 2011, ch. 43, § 1, p. 98; am. 2015, ch. 141, § 69, p. 379.

#### **STATUTORY NOTES**



**Cross References.**

Bureau of educational services for the deaf and the blind, § 33-3403.

Department of administration, § 67-5701 et seq.

**Prior Laws.**

Former § 33-3407 was repealed. See Prior Laws, § 33-3401.

**Amendments.**

The 2010 amendment, by ch. 191, in the introductory paragraph in subsection (1), rewrote the first sentence which formerly read: “The Idaho bureau of educational services for the deaf and blind shall be a governmental entity as provided in [section 33-5502, Idaho Code](#),” and added the second sentence; added the introductory paragraph in subsection (2); redesignated paragraphs (1)(f) through (1)(i) as paragraphs (2)(a) through (2)(d); in paragraphs (2)(a) through (2)(d), added the language beginning “or the laws, rules and policies” through to the end; redesignated former subsections (2) through (5) as subsections (3) through (6); and rewrote present subsection (4), which formerly read: “The Idaho bureau of educational services for the deaf and the blind shall secure insurance for liability and property loss.”

The 2011 amendment, by ch. 43, substituted “[section 67-5333, Idaho Code](#)” for “[section 67-5342, Idaho Code](#)” near the end of paragraph (2)(d).

The 2015 amendment, by ch. 141, substituted “Chapter 5, title 74” for “Chapter 2, title 59” in paragraph (1)(b); substituted “Chapter 4, title 74” for “Chapter 7, title 59” in paragraph (1)(c); substituted “Chapter 2, title 74” for “Chapter 23, title 67” in paragraph (1)(d); and substituted “Chapter 1, title 74” for “Chapter 3, title 9” in paragraph (1)(e).

**Effective Dates.**

Section 3 of S.L. 2011, ch. 43 declared an emergency and made the amendment of this section retroactive to July 1, 2010. Approved March 8, 2011.

**33-3408. Expenditures — Budget — Funding.** — (1) There is hereby created in the state treasury the Idaho bureau of educational services for the deaf and the blind trust fund, which is hereby continuously appropriated to the Idaho bureau of educational services for the deaf and the blind. The fund shall consist of appropriations, fees, grants, gifts or moneys from any other source. The state treasurer shall invest all idle moneys in the fund and interest earned on such investments shall be retained by the fund.

(2) On or before the first Monday in July, there shall be held at the time and place determined by the Idaho bureau of educational services for the deaf and the blind board, a budget meeting and public hearing upon the proposed budget of the Idaho bureau of educational services for the deaf and the blind. Notice of the budget meeting and public hearing shall be posted at least ten (10) full days prior to the date of the meeting in at least one (1) conspicuous place to be determined by the Idaho bureau of educational services for the deaf and the blind board of directors. The place, hour and day of the hearing shall be specified in the notice, as well as the place where such budget may be examined prior to the hearing. On or before the first Monday in July a budget for the Idaho bureau of educational services for the deaf and the blind shall be agreed upon and approved by the majority of the Idaho bureau of educational services for the deaf and the blind board of directors.

(3) The Idaho bureau of educational services for the deaf and the blind shall submit its annual appropriation request to the state superintendent of public instruction, by no later than the first day of August, for the superintendent's review, approval, and inclusion in the budget request of the educational support program. The state superintendent of public instruction shall disburse any funds appropriated to the Idaho bureau of educational services for the deaf and the blind trust fund. The Idaho bureau of educational services for the deaf and the blind board of directors shall use such moneys to provide supplemental services to deaf or hard of hearing and blind or visually impaired students in the state of Idaho.

**History.**

I.C., § 33-3408, as added by 2009, ch. 168, § 4, p. 502; am. 2010, ch. 191, § 5, p. 405.

## **STATUTORY NOTES**

### **Cross References.**

Bureau of educational services for the deaf and the blind, § 33-3403.

Educational support program, § 33-1002.

State superintendent of public instruction, § 67-1501 et seq.

State treasurer, § 67-1201 et seq.

### **Prior Laws.**

Former § 33-3408 was repealed. See Prior Laws, § 33-3401.

### **Amendments.**

The 2010 amendment, by ch. 191, in the first sentence in subsection (3), deleted “/division of children’s programs” from the end.

**33-3409. Rules.** — The state board of education is authorized to, with the advice and recommendation of the board of directors, promulgate rules to implement the provisions of this chapter.

**History.**

I.C., § 33-3409, as added by 2009, ch. 168, § 4, p. 502.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-3409 was repealed. See Prior Laws, § 33-3401.

**33-3410. Reporting deaf and blind pupils.** — On or before the first day of February, in each year, the clerk of each school district, including elementary school districts, charter schools designated by the state board of education to be identified as a local education agency (LEA) pursuant to section 33-5203, Idaho Code, and especially chartered school districts shall report the number of deaf and blind pupils, as defined in section 33-3402, Idaho Code, attending the school or schools of the district, and any such person, not a pupil in the school, of whom he may have knowledge. Such report shall be made to the Idaho bureau of educational services for the deaf and the blind, upon forms approved by the state board of education.

**History.**

I.C., § 33-3410, as added by 2009, ch. 168, § 4, p. 502.

**STATUTORY NOTES**

**Cross References.**

Bureau of educational services for the deaf and the blind, § 33-3403.

**Compiler's Notes.**

The abbreviation enclosed in parentheses so appeared in the law as enacted.

**33-3411. Acquisition of and title to property.** — (1) All rights and title to property, real and personal, belonging to the state of Idaho and vested in the Idaho state board of education for use as a school for the deaf and the blind shall remain with the Idaho state board of education.

(2) The Idaho state board of education may request moneys from the permanent building fund for the construction and maintenance of buildings on land owned by the state of Idaho and used by the Idaho bureau of educational services for the deaf and the blind.

**History.**

I.C., § 33-3411, as added by 2009, ch. 168, § 4, p. 502; am. 2010, ch. 191, § 6, p. 405.

**STATUTORY NOTES**

**Cross References.**

Bureau of educational services for the deaf and the blind, § 33-3403.

**Amendments.**

The 2010 amendment, by ch. 191, added the subsection (1) designation and subsection (2).

**33-3412. Sick leave transferred for employees of Idaho school for the deaf and the blind to Idaho bureau of educational services for the deaf and the blind.** — Notwithstanding any other provision of law to the contrary, any employee of the Idaho school for the deaf and the blind who has accrued sick leave pursuant to section 67-5333, Idaho Code, and who, on or before September 1, 2009, is transferred to or otherwise becomes an eligible employee of the Idaho bureau of educational services for the deaf and the blind shall be credited by the Idaho bureau of educational services for the deaf and the blind with the amount of sick leave accrued and unused at the time of transfer. After such transfer, the use of such sick leave and the accrual of additional sick leave shall be governed by the laws, rules and policies applicable to the Idaho bureau of educational services for the deaf and the blind.

**History.**

I.C., § 33-3412, as added by 2009, ch. 168, § 4, p. 502.

**33-3413. Sectarian tests prohibited.** — No religious or sectarian tests shall be applied to the admission of students, nor in the selection of instructors or other personnel of the school.

**History.**

I.C., § 33-3413, as added by 2009, ch. 168, § 4, p. 502.



**33-3414. General fund contingency reserve.** — The board of directors for the Idaho bureau of educational services for the deaf and the blind may create and establish a general fund contingency reserve within the annual Idaho bureau of educational services for the deaf and the blind budget. Such general fund contingency reserve shall not exceed five percent (5%) of the total general fund appropriation to the Idaho bureau of educational services for the deaf and the blind. Disbursements from this continuously appropriated fund may be made as the board of trustees determines necessary for contingencies that may arise. The balance of the contingency fund may be accumulated beyond the budgeted fiscal year, but shall never exceed five percent (5%) of the current year's appropriation to the Idaho bureau of educational services for the deaf and the blind.

**History.**

I.C., § 33-3414, as added by 2009, ch. 168, § 4, p. 502.



## **CHAPTER 35**

### **STATE YOUTH SERVICES CENTER**

Section.

33-3501 — 33-3503. [Amended and Redesignated.]

33-3504. Title to property — Acquiring, selling or exchanging property.  
[Repealed.]

33-3505. [Amended and Redesignated.]

33-3506. Sectarian tests prohibited.

33-3507. Religious services.

33-3508. Report of director.

33-3509 — 33-3513. [Repealed.]

**33-3501. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 33-3501 was amended and redesignated as § 20-543 by § 50 of S.L. 1995, ch. 44 and then repealed by S.L. 1997, ch. 83, § 4.

**33-3502. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 33-3502 was amended and redesignated as § 20-544 by § 51 of S.L. 1995, ch. 44 and then repealed by S.L. 1995, ch. 277, § 10.

**33-3503. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 33-3503 was amended and redesignated as § 20-545 by § 52 of S.L. 1995, ch. 44 and then repealed by S.L. 1997, ch. 83, § 4.

**33-3504. Title to property — Acquiring, selling or exchanging property.  
[Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

Another § 33-3504, which comprised 1903, p. 12, § 4; reen. R.C., § 808; compiled and reen. C.L. 47:4; C.S., § 1131; I.C.A., § 32-3004, was repealed by S.L. 1963, ch. 168, § 9.

**Compiler's Notes.**

This section, which comprised 1963, ch. 168, § 4, p. 486, was repealed by S.L. 1990, ch. 367, § 4.

**33-3505. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 33-3505 was amended and redesignated as § 20-546 by § 53 of S.L. 1995, ch. 44 and then repealed by S.L. 1997, ch. 83, § 4.



**33-3506. Sectarian tests prohibited.** — No religious or sectarian tests shall be applied to the selection of instructors or other employed personnel of the school.

**History.**

1963, ch. 168, § 6, p. 486.

**STATUTORY NOTES**

**Cross References.**

Religious tests, qualifications and teachings prohibited, Idaho **Const., Art. IX, § 6.**

**Prior Laws.**

Former §§ 33-3506 to 33-3508 were repealed by S.L. 1963, ch. 168, § 9: 33-3506. (1903, p. 12, § 8 and 1st part of § 9; am. R.C., § 812; reen. C.L., 47-8; C.S., § 1134; I.C.A., § 32-3006).

33-3507. (1903, p. 12, last par. of § 9 and § 10; reen. R.C., § 813; reen. C.L. 47-9; C.S., § 1135; I.C.A., § 32-3007).

33-3508. (1903, p. 12, § 11; reen. R.C., § 814; reen. C.L. 47:10; C.S., § 1136; I.C.A., § 32-3008).

**33-3507. Religious services.** — The superintendent shall provide for the holding of religious services on the Sabbath Day for the inmates of said school, such services to be conducted by ministers of the several religious denominations to which the inmates may belong.

**History.**

1963, ch. 168, § 7, p. 486.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-3507 was repealed. See Prior Laws, § 33-3506.

**33-3508. Report of director.** — The director shall, at the close of each month, present a report to the board of trustees showing the number of students admitted, the number in attendance and the number discharged and whether by parole or otherwise, and the general condition of the school and such other information, suggestions and recommendations as may be to the best interests of the school.

**History.**

1963, ch. 168, § 8, p. 486; am. 1974, ch. 23, § 13, p. 633.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-3508 was repealed. See Prior Laws, § 33-3506.

**Effective Dates.**

Section 10 of S.L. 1963, ch. 168, provided that the act should take effect on and after July 1, 1963.

Section 182 of S.L. 1974, ch. 23, provided the act should be in full force and effect on and after July 1, 1974.

**33-3509 — 33-3513. Appointment and qualifications of teachers — Report and duties of superintendent — Religious services — School as independent district — School to be nonsectarian — Courses of study. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1903, p. 12, §§ 12, 13, 15, 18, 27; reen. R.C., §§ 815, 816, 818, 820, 822; reen. C.L., §§ 47:11 to 47:15; C.S., §§ 1137 to 1141; I.C.A., §§ 32-3009 to 32-3013, were repealed by S.L. 1963, ch. 168, § 9.

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• [Title 33 »](#), [« Ch. 36 »](#)

## **CHAPTER 36**

### **COMPACT FOR COOPERATION IN HIGHER EDUCATION**

Section.

33-3601. Interstate Compact for Western Regional Cooperation in Higher Education ratified.

33-3602. Operative date of compact.

33-3603. Appointment of Idaho members of commission.

33-3604. Determination of cost per student — Repayment — Cancellation of debt when practicing profession.

**33-3601. Interstate Compact for Western Regional Cooperation in Higher Education ratified.** — The State of Idaho does hereby ratify, approve, adopt and confirm the Interstate Compact for Western Regional Cooperation in Higher Education heretofore entered into between the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii. The compact is, in words and figures as follows, except that any reference to the Territories of Alaska and Hawaii means the States of Alaska and Hawaii:

#### ARTICLE I

WHEREAS, the future of this Nation and of the Western States is dependent upon the quality of the education of its youth; and

WHEREAS, many of the Western States individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the States have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

WHEREAS, it is believed that the Western States, or groups of such states within the Region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the Region and of the students thereof:

Now, therefore, the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and the Territories of Alaska and Hawaii do hereby covenant and agree as follows:

#### ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this Compact.

#### ARTICLE III

The compacting states and territories hereby create the Western Interstate Commission for Higher Education, hereinafter called the Commission. Said Commission shall be a body corporate of each compacting state and territory and an agency thereof. The Commission shall have all the powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

#### ARTICLE IV

The Commission shall consist of three resident members from each compacting state or territory. At all times one Commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

The Commissioners from each state and territory shall be appointed by the Governor thereof as provided by law in such state or territory. Any Commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

The terms of each Commissioner shall be four years; provided however that the first three Commissioners shall be appointed as follows: one for two years, one for three years, and one for four years. Each Commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the Governor shall appoint a Commissioner to fill the office for the remainder of the unexpired term.

#### ARTICLE V

Any business transacted at any meeting of the Commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

One or more Commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

Each compacting state and territory represented at any meeting of the Commission is entitled to one vote.

#### ARTICLE VI

The Commission shall elect from its number a chairman and a vice chairman, and may appoint, and at its pleasure dismiss or remove, such



officers, agents, and employees as may be required to carry out the purpose of this Compact; and shall fix and determine their duties, qualifications and compensation, having due regard for the importance of the responsibilities involved.

The Commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the Commission.

## ARTICLE VII

The Commission shall adopt a seal and by-laws and shall adopt and promulgate rules and regulations for its management and control.

The Commission may elect such committees as it deems necessary for the carrying out of its functions.

The Commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The Chairman may call such additional meetings and upon the request of a majority of the Commissioners of three or more compacting states or territories shall call additional meetings.

The Commission shall submit a budget to the Governor of each compacting state and territory at such time and for such period as may be required.

The Commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the Region.

On or before the fifteenth day of January of each year, the Commission shall submit to the Governors and Legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the Governor of any compacting state or territory or his designated representative. The Commission shall not be subject to the audit and accounting procedure of any of the compacting

states or territories. The Commission shall provide for an independent annual audit.

## ARTICLE VIII

It shall be the duty of the Commission to enter into such contractual agreements with any institutions in the Region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the Commission to provide adequate services and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The Commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine, and may undertake similar activities in other professional and graduate fields.

For this purpose the Commission may enter into contractual agreements

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(a) with the governing authority of any educational institution in the Region, or with any compacting state or territory, to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties, and

(b) with the governing authority of any educational institution in the Region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the Region providing the desired services and facilities, upon such terms and conditions as the Commission may prescribe.

It shall be the duty of the Commission to undertake studies of needs for professional and graduate educational facilities in the Region, the resources for meeting such needs, and the long-range effects of the Compact on higher education; and from time to time to prepare comprehensive reports on such research for presentation to the Western Governors' Conference and to the legislatures of the compacting states and territories. In conducting such studies, the Commission may confer with any national or regional planning body which may be established. The Commission shall draft and recommend to the Governors of the various compacting states and territories, uniform legislation dealing with problems of higher education in the Region.

For the purposes of this Compact the word “Region” shall be construed to mean the geographical limits of the several compacting states and territories.

#### ARTICLE IX

The operating costs of the Commission shall be apportioned equally among the compacting states and territories.

#### ARTICLE X

This Compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii have duly adopted it prior to July 1, 1953. This Compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

#### ARTICLE XI

This Compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and Governor of such terminating state. Any state or territory may at any time withdraw from this Compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until two years after written notice thereof by the Governor of the withdrawing state or territory accompanied by a certified copy of the requisite legislative action is received by the Commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the two-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the Commission.

#### ARTICLE XII

If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this Compact, all rights, privileges and benefits

conferred by this Compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the Commission.

Unless such default shall be remedied within a period of two years following the effective date of such default, this Compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

Any such defaulting state may be reinstated by: (a) performing all acts and obligations upon which it has heretofore defaulted, and (b) application to and the approval by a majority vote of the Commission.

### **History.**

1953, ch. 248, § 1, p. 391; am. 2017, ch. 79, § 1, p. 219.

## **STATUTORY NOTES**

### **Amendments.**

The 2017 amendment, by ch. 79, divided the introductory paragraph into two sentences and made related changes, substituting “Wyoming, Alaska and Hawaii” for “and, Wyoming, and the Territories of Alaska and Hawaii, which said” in the first sentence and adding the exception in the second sentence.

### **Compiler’s Notes.**

This section was formerly compiled as § 33-4001.

In addition to the states listed at the beginning of this compact, North Dakota adopted the compact effective July 1, 1984, South Dakota adopted the compact effective July 1, 1988, and the Commonwealth of the Northern Mariana Islands adopted the compact effective November 13, 2012.

**33-3602. Operative date of compact.** — The foregoing compact shall as to the state of Idaho become operative, and shall be in full force and effect in accordance with the provisions of Article X thereof, upon the passage and approval of this act, and the Governor shall thereafter execute the Compact by and on behalf of this state in accordance with the terms thereof.

**History.**

1953, ch. 248, § 2, p. 391.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-4002.

The term “this act” in this section refers to S.L. 1953, Chapter 248, which is presently codified as §§ 33-3601 through 33-3603.

**Effective Dates.**

Pursuant to Article X of the compact and this section, the compact became operative in Idaho on May 13, 1953.

**33-3603. Appointment of Idaho members of commission.** — (a) The Governor shall thereupon appoint the Idaho members of the Western Interstate Commission for Higher Education.

(b) The qualifications and terms of office of the members of the Commission for this state shall conform with the provisions of Article IV of the Compact as it appears in section 33-3601[, Idaho Code].

(c) The Governor may remove a member of the Commission for cause after notice and public hearing.

**History.**

1953, ch. 248, § 3, p. 391.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 33-4003.

The bracketed insertion at the end of subsection (b) was added by the compiler to conform to the statutory citation style.

**33-3604. Determination of cost per student — Repayment — Cancellation of debt when practicing profession.** — The Idaho members of the Western Interstate Commission for Higher Education shall annually determine the cost to the state of Idaho of each student attending any out of state institution under the provisions of this chapter.

Each student attending any institution under the provisions of this act shall, by the acceptance of the benefits of this act, become obligated to the state of Idaho for the cost to the state of Idaho for such student, as determined by the Idaho members of the Western Interstate Commission for Higher Education. Such sum or sums, together with interest thereon at the rate of five per cent (5%) per annum from the time of the expenditure by the state of Idaho shall be repaid as follows: one-fourth ( $\frac{1}{4}$ ) of said sum, together with accrued interest on or before three (3) years from the date such student completes or terminates his education and/or internship and one-fourth ( $\frac{1}{4}$ ) of such sum with accrued interest on the same date annually thereafter until said sum, together with accrued interest shall have been fully paid. In case any student shall fail to make payment in accordance with the provisions of this section, the total unpaid balance shall become immediately due and payable and shall be recovered by suit brought by the attorney-general on behalf of the state of Idaho; Provided, however, that any student who shall, within three (3) years of completion of his education, engage in the practice of his profession continuously for the period of two (2) years in the state of Idaho, shall not be obligated to repay the cost of his education or any part thereof.

**History.**

I.C., § 33-4004, as added by 1963, ch. 274, § 1, p. 708.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Compiler's Notes.**

The term “this act” in this section, refers to S.L. 1963, Chapter 274, which is codified only as this section. The reference should probably be to “this chapter”, being chapter 36, title 33, Idaho Code.





## **CHAPTER 37**

### **MISCELLANEOUS PROVISIONS RELATING TO STATE INSTITUTIONS OF LEARNING**

#### **Section.**

- 33-3701. Contracts for housing facilities at state institutions.
- 33-3702. Creation of dormitory fund.
- 33-3703. Successors of board.
- 33-3704. Dining hall funds.
- 33-3705, 33-3706. [Repealed.]
- 33-3707. Receipts used in operation of dining halls.
- 33-3708. Dining halls not operated for profit.
- 33-3709. Excess dining hall funds to be remitted to general fund.  
[Repealed.]
- 33-3710. Uniform system of accounting for dining hall funds.
- 33-3711. Liability of state for dining halls limited.
- 33-3712. Office of bursar a public office — Duties and bond of bursar.
- 33-3713. Bursars as fiscal officers — Duty to make reports.
- 33-3714. Acceptance of gifts, legacies and devises.
- 33-3715. Interference with conduct of institutions of higher learning —  
Legislative intent.
- 33-3716. Unlawful conduct — Penalty.
- 33-3717. Fees at the university of Idaho. [Repealed.]
- 33-3717A. Fees at state colleges and universities.
- 33-3717B. Residency requirements.
- 33-3717C. Waiving fees or tuition for certain nonresident students.

- 33-3718. Additional charges authorized in the collection of debts — Public and private institutions of higher education.
- 33-3719. Student called to active duty.
- 33-3720. Professional studies program. [Repealed.]
- 33-3721. Professional studies account. [Repealed.]
- 33-3722. Student education incentive loan forgiveness contract. [Repealed.]
- 33-3723. Rural physician incentive fee assessment.
- 33-3724. Rural physician incentive fund. [Repealed.]
- 33-3725. Incentive payments from fund. [Repealed.]
- 33-3726. Higher education stabilization fund.
- 33-3727. Military education, training and service — Award of academic credit — Development of policies.
- 33-3728. Organ donation notification.
- 33-3729. Transfer of credits.

**33-3701. Contracts for housing facilities at state institutions.** — The state board of education and board of regents of the University of Idaho, acting as the board of regents of the University of Idaho, or as the board of trustees of the Lewis-Clark State College, or as the board of trustees of the Boise State University, or as the board of trustees of the Idaho State University are hereby authorized to enter into contracts with persons, firms and corporations, for the purpose of providing dormitory and housing facilities for the students of said institutions; for the purposes the board may contract for the leasing and purchase of lands and buildings and for the purchase and installation of fixtures, furniture, furnishings and equipment in such buildings; the board may contract to pay as rent or otherwise a sum sufficient to pay, on the amortization plan, the principal and interest thereon, of the purchase-price of lands and buildings, such contracts to run not over twenty (20) years; the rate of interest on the principal on any purchase shall not exceed seven percent (7%) per annum payable semiannually or annually.

**History.**

1923, ch. 72, § 1, p. 79; am. 1929, ch. 132, § 1, p. 216; I.C.A., § 32-3201; am. 1947, ch. 99, § 13, p. 182; am. 1947, ch. 100, § 12, p. 190; am. 1947, ch. 107, § 11, p. 217; am. 1963, ch. 286, § 1, p. 752; am. 2009, ch. 11, § 10, p. 14.

**STATUTORY NOTES**

**Cross References.**

Bonds, issuance under Educational Institutions Act of 1935, § 33-3801 et seq.

**Amendments.**

The 2009 amendment, by ch. 11, substituted “Lewis-Clark State College” for “Lewis-Clark Normal School” and inserted “or as the board of trustees of the Boise State University.”

**33-3702. Creation of dormitory fund.** — Said board is hereby authorized to create a separate fund for each of said four institutions, to be known as the “dormitory fund.” Said board is hereby authorized to pay into each of said respective dormitory funds, all room, dormitory or housing rentals received by said respective institutions, not including the proceeds of any anticipated appropriations made by the state nor the interest from the permanent endowment, and to pledge on behalf of each of said respective institutions, its said dormitory fund for the payment of all rental or other charges agreed to be paid on account of such dormitory or dormitories as well as for the payment of the purchase-price of land or lands and buildings, or the payment of the agreed cost of construction of such buildings or building, and the purchase-price of fixtures, furniture, furnishings and equipment for such buildings together with the cost of installation thereof; so as to be used for dormitory or housing purposes by said respective institutions, and such dormitory funds, or so much thereof as may be necessary are hereby appropriated for the purposes herein set forth.

**History.**

1923, ch. 72, § 2, p. 79; am. 1929, ch. 132, § 2, p. 216; I.C.A., § 32-3202.

**RESEARCH REFERENCES**

**A.L.R.** — Living quarters: tax exemption of property of educational body as extending to property used by personnel as living quarters. [55 A.L.R.3d 485](#).

Validity, under Federal Constitution, of regulation or policy of college or university requiring students to live in dormitories or residence halls. [31 A.L.R. Fed. 813](#).

**33-3703. Successors of board.** — The powers hereby conferred upon the said board of education shall inure to the body, commission, commissioners, officer or officers that may at any time succeed said board.

**History.**

1923, ch. 72, § 3, p. 79; I.C.A., § 32-3203.

**33-3704. Dining hall funds.** — Whereas heretofore and under the supervision of the state board of education in its capacity as board of trustees of the several state educational institutions, there have been established and are now in operation dining halls, and no clear legislative direction as to disposition to be made of accumulations in dining hall funds exists, now therefore, it is hereby declared that the operation of dining halls at educational institutions under the supervision of, and where deemed necessary by the state board of education, is a public purpose and a necessary incident to the proper government of such educational institutions.

**History.**

1943, ch. 3, § 1, p. 4; am. 1965, ch. 124, § 1, p. 250.

**33-3705. Accumulation of dining hall funds to be remitted to state treasury. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1943, ch. 3, § 2, p. 4, was repealed by S.L. 1965, ch. 124, § 2.



**33-3706. Permanent revolving funds for operation of dining halls.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1943, ch. 3, § 3, p. 4; am. 1947, ch. 99, § 12, p. 182; am. 1947, ch. 100, § 11, p. 190; am. 1947, ch. 107, § 10, p. 217; am. 1963, ch. 286, § 2, p. 752, was repealed by S.L. 1965, ch. 124, § 3.

**33-3707. Receipts used in operation of dining halls.** — The receipts of said dining halls shall be used and utilized by said institutions in the operation of said dining halls; and any net profits may be disbursed upon the authority of the board of trustees for the payment of interest or principal of any revenue bonds issued by the institution under the authority of chapter 38, title 33, Idaho Code. Provided further that a reasonable reserve to be determined by the state board of education, acting as board of trustees, is hereby created for replacement of dining hall equipment.

**History.**

1943, ch. 3, § 4, p. 4; am. 1963, ch. 286, § 3, p. 752; am. 1965, ch. 124, § 4, p. 250.

**STATUTORY NOTES**

**Effective Dates.**

Section 4 of S.L. 1963, ch. 286, provided that the act should take effect on and after July 1, 1963.

**33-3708. Dining halls not operated for profit.** — Such dining halls shall never be operated for any commercial purpose, but shall be used for the benefit of such educational institutions, their faculties, students and officers as nearly as may be, in the sound discretion of the state board of education with the object of making available wholesome food at the most reasonable cost to the students, officers and faculties.

**History.**

1943, ch. 3, § 5, p. 4; am. 1965, ch. 124, § 5, p. 250.

**33-3709. Excess dining hall funds to be remitted to general fund.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1943, ch. 3, § 6, p. 4, was repealed by S.L. 1965, ch. 124, § 6.

**33-3710. Uniform system of accounting for dining hall funds.** — The state board of education in its capacities as trustees of the several educational institutions, shall, by provisions uniform in all such institutions, establish such system of accounting, expenditure and reimbursement of such revolving fund as may be appropriate and as may be ordered by the state controller.

**History.**

1943, ch. 3, § 7, p. 4; am. 1994, ch. 180, § 52, p. 420.

**STATUTORY NOTES**

**Cross References.**

State controller, § 67-1001 et seq.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such amendment was adopted, the amendment to this section by § 52 of S.L. 1994, ch. 180 became effective January 2, 1995.

**33-3711. Liability of state for dining halls limited.** — Nothing in sections 33-3704 — 33-3711[, Idaho Code,] shall be construed to create or to impose upon the state any liability whatever beyond payment to such institutions of the sums herein appropriated.

**History.**

1943, ch. 3, § 8, p. 4.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**Effective Dates.**

Section 9 of S.L. 1943, ch. 3 declared an emergency and provided that the act should become effective on its passage and approval. Approved Jan. 22, 1943.

**33-3712. Office of bursar a public office — Duties and bond of bursar.** — The office of bursar at state educational institutions is declared a public office and the state board of education in its capacity as boards of trustees for the several state educational institutions is empowered to fix the duties of bursars and in its discretion fix the amount of the bond to be given by such bursars as such officers. In the performance of his duties each bursar shall be supervised as the state board of education and board of regents may direct.

**History.**

1943, ch. 73, § 1, p. 155; am. 1971, ch. 106, § 1, p. 227.

**STATUTORY NOTES**

**Compiler's Notes.**

S.L. 1943, ch. 73 carried a preamble which read: "Whereas bursars are and necessarily have been appointed for proper administration of affairs of state educational institutions, but there has been no legal definement of the status of such bursars by legislative enactment, such definement is declared requisite to orderly government."

**33-3713. Bursars as fiscal officers — Duty to make reports.** — Subject to the control of the state board of education in its capacities as boards of trustees for the said institutions severally, the bursars shall be deemed fiscal officers of such institutions, and whenever by any law or grant any such institution is required to make reports in financial matters, or make remittances of funds, or shall receive funds or property, unless otherwise provided by law the bursar shall make such reports and remittances and receive such funds or property.

**History.**

1943, ch. 73, § 2, p. 155.

**STATUTORY NOTES**

**Cross References.**

Authority and duties of bursars of state educational institutions, § 67-2025.



**33-3714. Acceptance of gifts, legacies and devises.** — The board of regents of the University of Idaho and the state board of education are hereby authorized in the name of any state educational institution and on behalf of the state, to accept gifts, legacies and devises of property to the state for the use and benefit of any of the state educational institutions.

**History.**

1933, ch. 127, § 1, p. 196.

**33-3715. Interference with conduct of institutions of higher learning — Legislative intent.** — The legislature, in recognition of unlawful campus disorders across the nation which are disruptive of the educational process and dangerous to the health and safety of persons and damaging to public and private property, establishes by this act criminal penalties for conduct declared in this act to be unlawful. However, this act shall not be construed as preventing institutions of higher education from establishing standards of conduct, scholastic and behavioral, reasonably relevant to their lawful missions, processes, and functions, and to invoke appropriate discipline for violations of such standards.

**History.**

1969, ch. 223, § 1, p. 729.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” throughout this section refers to S.L. 1969, Chapter 223 which is presently compiled as §§ 33-3715 and 33-3716.

**RESEARCH REFERENCES**

**A.L.R.** — Participation of student in demonstration on or near campus as warranting imposition or criminal liability for breach of peace disorderly conduct trespass, unlawful assembly, or similar offense. [32 A.L.R.3d 551](#).

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college. [32 A.L.R.3d 864](#).

Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students. [36 A.L.R.3d 330](#).

**33-3716. Unlawful conduct — Penalty.** — (1) No person shall, on the campus of any community college, junior college, college, or university in this state, hereinafter referred to as “institutions of higher education,” or at or in any building or other facility owned, operated, or controlled by the governing board of any such institution of higher education, willfully deny to students, school officials, employees, and invitees:

- (a) lawful freedom of movement on the campus;
- (b) lawful use of property, facilities, or parts of any institution of higher education; or
- (c) the right of lawful ingress and egress to the institution’s physical facilities.

(2) No person shall, on the campus of any institution of higher education, or at or in any building or other facility owned, operated, or controlled by the governing board of any such institution, willfully impede the staff or faculty of such institution in the lawful performance of their duties, or willfully impede a student of such institution in the lawful pursuit of his educational activities, through the use of restraint, abduction, coercion, or intimidation, or when force and violence are present or threatened.

(3) No person shall willfully refuse or fail to leave the property of, or any building or other facility owned, operated, or controlled by the governing board of any such institution of higher education upon being requested to do so by the chief administrative officer, his designee charged with maintaining order on the campus and in its facilities, or a dean of such college or university, if such person is committing, threatens to commit, or incites others to commit, any act which would disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions of the institution.

(4) Nothing in this section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute between an institution of higher education and its employees.

(5) Any person who violates any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500), or imprisoned in the county jail for a period not to exceed one (1) year, or by both such fine and imprisonment.

**History.**

1969, ch. 223, § 2, p. 729.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 4 of S.L. 1969, ch. 223 read: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

**Effective Dates.**

Section 3 of S.L. 1969, ch. 223 provided that this act should take effect on the first day of the first month following its passage, and should apply only to violations of the act alleged to have occurred on or after such date. Approved March 21, 1969.

**RESEARCH REFERENCES**

**A.L.R.** — Participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or similar offense. [32 A.L.R.3d 551](#).

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college. [32 A.L.R.3d 864](#).

### **33-3717. Fees at the university of Idaho. [Repealed.]**

Repealed by S.L. 2011, ch. 39, § 1, effective March 8, 2011. For present comparable provisions, see § 33-3717A.

#### **History.**

**I.C., § 33-3717**, as added by 2005, ch. 210, § 2, p. 626.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 33-3717, which comprised **I.C., § 33-3717**, as added by 1970, ch. 226, § 1, p. 634; am. 1974, ch. 83, § 1, p. 1173; am. 1978, ch. 22, § 1, p. 43; am. 1979, ch. 73, § 1, p. 182; am. 1981, ch. 333, § 1, p. 695; am. 1986, ch. 34, § 1, p. 106; am. 1987, ch. 50, § 1, p. 81; am. 1989, ch. 108, § 1, p. 248; am. 1992, ch. 119, § 1, p. 394; am. 1994, ch. 140, § 1, p. 312, was repealed by S.L. 2005, ch. 210, § 1.

**33-3717A. Fees at state colleges and universities.** — (1) The state board of education and the board of regents of the university of Idaho may prescribe fees, including tuition fees, for resident and nonresident students enrolled in all state colleges and universities. For purposes of this section, said fees, including tuition fees, may be used for any and all educational costs at the state colleges and universities including, but not limited to, costs associated with:

- (a) Academic services; (b) Instruction;
- (c) The construction, maintenance and operation of buildings and facilities; (d) Student services; or (e) Institutional support.

The state board of education also may prescribe fees for all students for any additional charges that are necessary for the proper operation of each institution.

(2) A resident student is a student who meets the residency requirements imposed by [section 33-3717B, Idaho Code](#).

(3) Nothing contained in this section shall prevent the state board of education from waiving fees, including tuition fees, to be paid by nonresident students, as defined in [section 33-3717C, Idaho Code](#), who are enrolled in the state colleges and universities.

(4) Nothing contained in this section shall apply to community colleges now or hereafter established pursuant to chapter 21, title 33, Idaho Code, or to postsecondary professional-technical schools now or hereafter established and not connected to or a part of a state college or university.

### **History.**

[I.C., § 33-3717A](#), as added by 2005, ch. 210, § 3, p. 626; am. 2011, ch. 39, § 2, p. 94.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 39, deleted “other than the university of Idaho” from the end of the section heading, and, in the first sentence of subsection (1), inserted “and the board of regents of the university of Idaho” near the beginning and deleted “other than the university of Idaho” from the end.

**Compiler’s Notes.**

Former § 33-3717A was amended and redesignated as § 33-3717C by § 5 of S.L. 2005, ch. 210.

**Effective Dates.**

Section 4 of S.L. 2011, ch. 39 declared an emergency. Approved March 8, 2011.

**33-3717B. Residency requirements.** — (1) For any Idaho public institution of higher education, a “resident student” is:

(a) Any student who has one (1) or more parent or parents or court-appointed guardians who are domiciled in the state of Idaho, and the parent, parents or guardians provide at least fifty percent (50%) of the student’s support. Domicile, as used in this section, means that individual’s true, fixed and permanent home and place of habitation. It is the place where that individual intends to remain, and to which that individual expects to return when that individual leaves without intending to establish a new domicile elsewhere. To qualify under this section, the parent, parents or guardians must have maintained a domicile in the state of Idaho for at least twelve (12) months prior to the opening day of the term for which the student matriculates.

(b) Any student who receives less than fifty percent (50%) of the student’s support from a parent, parents or legal guardians and who has continuously resided and maintained a bona fide domicile in the state of Idaho primarily for purposes other than educational for twelve (12) months preceding the opening day of the term for which the student matriculates.

(c) Any student who is a graduate of an accredited secondary school in the state of Idaho pursuant to [section 33-119, Idaho Code](#), is domiciled in Idaho, and matriculates at an Idaho public institution of higher education within eight (8) years immediately following secondary school graduation regardless of the domicile of the student’s parent or guardian, or any student who completes six (6) years of elementary and secondary education in Idaho, is domiciled in Idaho, and matriculates at an Idaho public institution of higher education within eight (8) years immediately following completion of secondary education.

(d) The spouse of a person who is classified, or is eligible for classification, as a resident of the state of Idaho for the purposes of attending an Idaho public institution of higher education, except that a student who was enrolled as a full-time student in any term during the twelve (12) month period before the term in which the student proposes



to enroll as a resident student must independently establish domicile under subsection (2) of this section.

(e) A member of the armed forces of the United States who entered service as an Idaho resident and who has maintained Idaho resident status, but is not stationed within the state of Idaho on military orders.

(f) A member of the armed forces of the United States, stationed in the state of Idaho on military orders.

(g) An officer or an enlisted member of the Idaho national guard.

(h) A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state of Idaho within one (1) year of the date of separation, or who moves to Idaho for the purpose of establishing domicile; provided however, to maintain status as a resident student, such person must actively establish domicile in Idaho within one (1) year of matriculation in a public institution of higher education in Idaho.

(i) The dependent child of a person who qualifies as a resident student under the provisions of paragraphs (e) through (g) of this subsection and who receives at least fifty percent (50%) support from such person shall also be a resident student and shall not lose that resident status if, after he or she enters an Idaho public institution of higher education, the parent or guardian is transferred out of the state of Idaho on military orders.

(j) A student who is a member of an Idaho Native American Indian tribe, whose traditional and customary tribal boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho. The state board of education shall maintain a list of tribes that meet these requirements.

(k) A student matriculating at and attending a public institution of higher education in Idaho in a graduate or professional program who:

(i) Graduated from an institution of higher education located in Idaho that:

1. Is public;

2. Is private and holds a certificate of registration with the board pursuant to [section 33-2402, Idaho Code](#); or

3. Is private, nonprofit and exempt from registration with the board pursuant to [section 33-2402, Idaho Code](#);

(ii) Physically resided in Idaho for at least the final twelve (12) months of undergraduate studies;

(iii) Earned a baccalaureate degree from the undergraduate institution sufficient to meet the standards for admission into the graduate or professional program; and

(iv) Enrolls in the graduate or professional program no later than thirty-six (36) months after receiving a baccalaureate degree from the undergraduate institution.

(2) The establishment of a new domicile in Idaho by a person formerly domiciled in another state has occurred if such person has resided in Idaho for the prior twelve (12) months and:

(a) Is physically present in Idaho primarily for purposes other than educational. An undergraduate student who is enrolled as a full-time student in any term during the prior twelve (12) month period shall be presumed to be in Idaho for primarily educational purposes. Such period of enrollment shall not be counted toward the establishment of a domicile in this state unless the student can provide proof of full-time employment in Idaho for twelve (12) months before the term in which the student proposes to enroll as a resident student and the filing of an Idaho state resident income tax return for the prior tax year; or

(b) Is a full-time student in a graduate or professional program at an institution of higher education in Idaho.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the following students shall be considered nonresidents for tuition purposes:

(a) A student attending an Idaho public institution of higher education with financial assistance provided by another country or governmental unit or agency thereof. Such nonresidency shall continue for twelve (12)

months after the completion of the last semester for which such assistance was provided.

(b) A student who is not a United States citizen, unless lawfully present in the United States.

(4) The state board of education and the board of regents of the university of Idaho shall adopt uniform and standard rules applicable to all Idaho public institutions of higher education now or hereafter established to determine residency status of any student and to establish procedures for review of that status.

(5) Appeal from a final determination denying residency status may be initiated by the filing of an action in the district court of the county in which the affected public institution of higher education is located. An appeal from the district court shall lie as in all civil actions.

(6) Nothing contained herein shall prevent the state board of education and the board of regents of the university of Idaho from establishing quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not residents for purposes of higher education.

(7) For students who apply for special graduate and professional programs including, but not limited to, the WWAMI (Washington, Wyoming, Alaska, Montana, Idaho) regional medical program, the WICHE student exchange programs, Idaho dental education program, the university of Utah school of medicine, and the Washington-Idaho regional program in veterinary medicine, no applicant shall be certified or otherwise designated as a beneficiary of such special program who does not meet the definition of resident student as set forth in subsection (1) of this section.

### **History.**

**I.C., § 33-3717B**, as added by 2005, ch. 210, § 4, p. 626; am. 2008, ch. 66, § 2, p. 170; am. 2008, ch. 226, § 1, p. 690; am. 2009, ch. 329, § 1, p. 939; am. 2010, ch. 77, § 1, p. 126; am. 2012, ch. 21, § 1, p. 74; am. 2014, ch. 75, § 2, p. 197; am. 2016, ch. 114, § 1, p. 324; am. 2018, ch. 200, § 1, p. 451.

## **STATUTORY NOTES**

## **Amendments.**

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 66, added subsection (1)(f) and made related redesignations; and in subsection (7), substituted “WWAMI” for “WAMI,” and inserted “Wyoming.”

The 2008 amendment, by ch. 226, rewrote the section to the extent that a detailed comparison is impracticable.

The 2009 amendment, by ch. 329, in subsection (1)(i), added the proviso in the first sentence and added the last sentence.

The 2010 amendment, by ch. 77, in paragraph (1)(h), in the first sentence, added the language beginning “or who moves to Idaho” through to the end and added the last sentence.

The 2012 amendment, by ch. 21, in subsection (1), added paragraph (e) and redesignated former paragraphs (e) and (f) as present paragraphs (f) and (g), deleted former paragraph (g), which read, “A student whose parent or guardian is a member of the armed forces and stationed in the state of Idaho on military orders and who receives fifty percent (50%) or more of support from parents or legal guardians. The student, while in continuous attendance, shall not lose that residence when the student’s parent or guardian is transferred on military orders”, designated the last sentence of paragraph (h) as paragraph (i), and rewrote that sentence, which formerly read, “The dependent of a person who qualifies as a resident student under this paragraph and who receives at least fifty percent (50%) support from such person shall also be a resident student”, and redesignated former paragraphs (i) and (j) as present paragraph (j) and (k).

The 2014 amendment, by ch. 75, rewrote paragraph (1)(k), which formerly read: “A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of fees or tuition at institutions of higher education: members of the following Idaho Native American Indian tribes, whose traditional and customary tribal boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho: (i) Coeur d’Alene tribe; (ii)

Shoshone-Paiute tribes; (iii) Nez Perce tribe; (iv) Shoshone-Bannock tribes; (v) Kootenai tribe”; and substituted “Washington-Idaho-Utah (W-I-U)” for “Washington, Oregon, Idaho (WOI)” and “veterinary medicine” for “veterinary medical education” in subsection (7).

The 2016 amendment, by ch. 114, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2018 amendment, by ch. 200, substituted “eight (8) years immediately” for “six (6) years immediately” twice in paragraph (1)(c) and added paragraph (1)(k); redesignated the last part of the first sentence and the second and third sentences of former subsection (2) as paragraph (2)(a), substituted “An undergraduate student” for “A student” in the first sentence of paragraph (2)(a), and added paragraph (2)(b).

### **Compiler’s Notes.**

For more information on WWAMI, referred to in subsection (7), see <https://www.uidaho.edu/academics/wwami>.

For more information on WICHE exchange programs, referred to in subsection (7), see <https://www.wiche.edu/wue>.

For more information on the university of Utah school of medicine, referred to in subsection (7), see <https://medicine.utah.edu>.

For more information on the Washington-Idaho regional program in veterinary medicine, referred to in subsection (7), see <https://boardofed.idaho.gov/higher-education-public/medical-specialty-programs/washington-idaho-regional-veterinary-medical-education-program>.

The state names and abbreviations enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 2 of S.L. 2009, ch. 329 declared an emergency. Approved May 12, 2009.

**33-3717C. Waiving fees or tuition for certain nonresident students.**

— (1) Notwithstanding any other provision of law the state board of education and the board of regents of the university of Idaho may determine when to grant a full or partial waiver of fees or tuition charged to nonresident students pursuant to reciprocal agreements with other states. In making this determination, the state board of education and the board of regents of the university of Idaho shall consider the potential of the waiver to:

(a) Enhance educational opportunities for Idaho residents; (b) Promote mutually beneficial cooperation and development of Idaho communities and nearby communities in neighboring states; (c) Contribute to the quality of educational programs; and (d) Assist in maintaining the cost effectiveness of auxiliary operations in Idaho institutions of higher education.

(2) Consistent with the determinations made pursuant to subsection (1) hereof, the state board of education and the board of regents of the university of Idaho may enter into agreements with other states to provide for a full or partial reciprocal waiver of fees or tuition charged to students. Each agreement shall provide for the numbers and identifying criteria of students, and shall specify the institutions of higher education that will be affected by the agreement.

(3) The state board of education and the board of regents of the university of Idaho shall establish policy guidelines for the administration by the affected Idaho institutions of any tuition waivers authorized under this section, for evaluating applicants for such waivers, and for reporting the results of the reciprocal waiver programs authorized in this section.

(4) A report and financial analysis of any waivers authorized under this section shall be submitted annually to the legislature as part of the budget recommendations of the state board of education and the board of regents of the university of Idaho for the system of higher education in this state.

**History.**

I.C., § 33-3717A, as added by 1982, ch. 256, § 1, p. 667; am. 1986, ch. 32, § 1, p. 103; am. and redesign. 2005, ch. 210, § 5, p. 626.

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section was formerly compiled as § 33-3717A.

**33-3718. Additional charges authorized in the collection of debts — Public and private institutions of higher education.** — Each state public or private institution of higher education may, in the control and collection of any debt or claim due and owing to it, impose reasonable financing and late charges, as well as reasonable costs and expenses incurred in the collection of such debts, if provided for in the note or agreement signed by the debtor.

**History.**

I.C., § 33-3718, as added by 1980, ch. 141, § 1, p. 306.



**33-3719. Student called to active duty.** — Whenever any active member of the Idaho national guard is called or ordered by the governor to state active duty for thirty (30) consecutive days or more, or to duty other than for training pursuant to title 32, U.S.C., or called or ordered by competent federal authority into active federal service under title 10, U.S.C., for duty other than for training for thirty (30) consecutive days or more, or whenever a member of any reserve United States military force is ordered to said active federal service, an educational institution in this state in which the member is enrolled shall grant the member military leave of absence from his education. Individuals on military leave of absence from their educational institution, upon release from military duty, shall be restored to the educational status they had attained prior to their being ordered to military duty without loss of academic credits earned, scholarships or grants awarded, or tuition and other fees paid prior to the commencement of the military duty. It shall be the duty of the educational institution to refund tuition or fees or to credit the tuition, scholarships, grants and fees to the next academic semester or term after the termination of the educational military leave of absence at the option of the student.

**History.**

**I.C., § 33-3719**, as added by 2003, ch. 251, § 3, p. 650; am. 2004, ch. 60, § 1, p. 278; am. 2007, ch. 108, § 2, p. 313.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-3719, which comprised **I.C., § 33-719**, as added by 1981, ch. 120, § 1, p. 206; am. 1994, ch. 180, § 53, p. 420, was repealed by S.L. 1999, ch. 196, § 1, effective July 1, 1999.

**Amendments.**

The 2007 amendment, by ch. 108, inserted “or whenever a member of any reserve United States military force is ordered to said active federal service” in the first sentence.

**Effective Dates.**

Section 5 of S.L. 2003, ch. 251 provided: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect when the Governor enters an order, and files it with the Secretary of State, calling or ordering members of the Idaho National Guard to state active duty or to Title 32 U.S.C. duty other than for training as defined in Section 1 of this act, or on July 1, 2003, whichever occurs first.”

Section 2 of S.L. 2004, ch. 60 declared an emergency. Approved March 16, 2004.

**33-3720. Professional studies program. [Repealed.]**

Repealed by S.L. 2020, ch. 18, § 1, effective July 1, 2020.

**History.**

I.C., § 33-3720, as added by 1983, ch. 182, § 1, p. 494; am. 2005, ch. 210, § 6, p. 626.

**33-3721. Professional studies account. [Repealed.]**

Repealed by S.L. 2020, ch. 18, § 2, effective July 1, 2020.

**History.**

I.C., § 33-3721, as added by 1983, ch. 182, § 2, p. 494; am. 2012, ch. 26, § 1, p. 83.

**33-3722. Student education incentive loan forgiveness contract.  
[Repealed.]**

Repealed by S.L. 2013, ch. 72, § 1, effective July 1, 2013.

**History.**

**I.C., § 33-3722**, as added by 1988, ch. 309, § 1, p. 965; am. 1989, ch. 118, § 1, p. 264; am. 1990, ch. 28, § 1, p. 42; am. 2005, ch. 173, § 1, p. 535.

**33-3723. Rural physician incentive fee assessment.** — The state board of education may assess a fee to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for a professional education program in those fields, as those fields are defined by the compact. The fee may not exceed an amount equal to four percent (4%) of the annual average medicine support fee paid by the state. The fee must be assessed by the board and deposited in the rural physician incentive fund established in section 39-5902, Idaho Code, to be administered by the department of health and welfare. Moneys are also payable into the fund from state appropriations, private contributions, gifts and grants and other sources. Income and earnings on the fund shall be returned to the fund. Subject to appropriation, the state shall match student contributions to the fund at a rate of two state dollars (\$2.00) for every one dollar (\$1.00) assessed as a student fee. The expenses of administering the [rural] physician incentive fund portion of the fund shall not exceed ten percent (10%) of the annual fees assessed pursuant to this section.

### **History.**

I.C., § 33-3723, as added by 2003, ch. 283, § 1, p. 767; am. 2012, ch. 44, § 1, p. 132; am. 2018, ch. 138, § 1, p. 284.

## **STATUTORY NOTES**

### **Cross References.**

Interstate agreements for study of medicine, § 33-3717B.

Department of health and welfare, § 56-1001 et seq.

### **Amendments.**

The 2012 amendment, by ch. 44, substituted “[section 39-5902, Idaho Code](#), to be administered by the department of health and welfare” for “[section 33-3724, Idaho Code](#)” at the end of the third sentence and added the fourth to sixth sentences.

The 2018 amendment, by ch. 138, inserted the next-to-last sentence in the section.

**Compiler's Notes.**

The bracketed insertion in the last sentence was added by the compiler to correct the name of the referenced fund. See § 39-5902.

**33-3724. Rural physician incentive fund. [Repealed.]**

Repealed by S.L. 2012, ch. 44, § 2, effective July 1, 2012. For present comparable provisions, see § 39-5902 et seq.

**History.**

**I.C., § 33-3724**, as added by 2003, ch. 283, § 2, p. 767; am. 2010, ch. 240, § 1, p. 621.



**33-3725. Incentive payments from fund. [Repealed.]**

Repealed by S.L. 2012, ch. 44, § 3, effective July 1, 2012. For present comparable provisions, see § 39-5902 et seq.

**History.**

**I.C., § 33-3725**, as added by 2003, ch. 283, § 3, p. 767; am. 2010, ch. 240, § 2, p. 621.

**33-3726. Higher education stabilization fund.** — There is hereby created in the state treasury a fund to be known as the higher education stabilization fund. The higher education stabilization fund shall consist of three (3) separate accounts as follows:

(1) An account designated the strategic interest account shall consist of interest earnings from the investment of moneys deposited with the state treasurer into unrestricted current fund 0650-00, as designated by the state controller in the statewide accounting and reporting system. Annually on July 1, or as soon thereafter as is practicable, the state controller shall transfer such interest earnings to the strategic interest account. All moneys so transferred shall be expended for the maintenance, use and support of institutions that have deposited moneys into unrestricted current fund 0650-00. All such expenditures shall be subject to legislative appropriation. Institutions shall receive a pro rata share of a legislative appropriation based upon the amount of moneys any such institution has deposited into unrestricted current fund 0650-00 in the current fiscal year compared to the total amount deposited by all institutions in the current fiscal year. Interest earned from the investment of moneys in the strategic interest account shall be retained in the strategic interest account.

(2) An account designated the surplus stabilization account shall consist of any other moneys made available through legislative transfers, appropriations or otherwise provided by law, or from any other governmental source. All such moneys shall be expended for the maintenance, use and support of institutions named in [section 33-3803, Idaho Code](#). Such expenditures shall be made subject to legislative appropriation to the state board of education for college and universities. Distribution of such moneys to institutions shall be based upon the state board of education's established practices for the allocation of moneys to such institutions. Interest earned from the investment of moneys in this surplus stabilization account shall be retained in this surplus stabilization account.

(3) An account designated the surplus stabilization account for college of eastern Idaho, north Idaho college, college of southern Idaho, and college of

western Idaho shall consist of any other moneys made available through legislative transfers, appropriations, or otherwise provided by law, or from any other governmental source. All such moneys shall be expended for the maintenance, use, and support of college of eastern Idaho, north Idaho college, college of southern Idaho, and college of western Idaho. Such expenditures shall be made subject to legislative appropriation to the community colleges. Distribution of such moneys shall be based on the state board of education's established practices for the allocation of moneys to the community colleges. Interest earned from the investment of moneys in this surplus stabilization account shall be retained in this surplus stabilization account.

### **History.**

**I.C., § 33-3726**, as added by 2010, ch. 69, § 1, p. 117; am. 2016, ch. 25, § 24, p. 35; am. 2016, ch. 125, § 1, p. 359; am. 2018, ch. 17, § 5, p. 22; am. 2020, ch. 34, § 1, p. 69.

## **STATUTORY NOTES**

### **Cross References.**

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

### **Amendments.**

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 25, substituted “division of career technical education” for “division of professional-technical education” twice in the third sentence in subsection (3).

The 2016 amendment, by ch. 125, substituted “four (4) separate accounts” for “3 (three) separate accounts” in the introductory paragraph and added subsection (4).

The 2018 amendment, by ch. 17, rewrote subsection (3), which formerly read: “An account designated the surplus stabilization account for Eastern Idaho Technical College, North Idaho College, College of Southern Idaho

and College of Western Idaho shall consist of any other moneys made available through legislative transfers, appropriations or otherwise provided by law, or from any other governmental source. All such moneys shall be expended for the maintenance, use and support of Eastern Idaho Technical College, North Idaho College, College of Southern Idaho and College of Western Idaho. Such expenditures shall be made subject to legislative appropriation to Eastern Idaho Technical College, through the appropriation to the division of career technical education, and to the community colleges. Distribution of such moneys shall be based upon established practices for the allocation of moneys to Eastern Idaho Technical College through the division of career technical education, or the state board of education's established practices for the allocation of moneys to the community colleges. Interest earned from the investment of moneys in this surplus stabilization account shall be retained in this surplus stabilization account."

The 2020 amendment, by ch. 34, substituted "three (3) separate accounts" for "four (4) separate accounts" near the end of the introductory paragraph and deleted former subsection (4), which read: "An account designated the community college start-up account shall consist of any other moneys made available through legislative transfers, appropriations or otherwise provided by law, or from any other governmental source. All such moneys shall be expended for the establishment, use and support of a community college in eastern Idaho. Distribution of such moneys shall be based upon voter approval of a community college district and appointment of a local board of trustees by the state board of education. Such expenditures shall be made subject to legislative appropriation to the state board of education. Interest earned from the investment of moneys in this community college start-up account shall be retained in this community college start-up account."

**33-3727. Military education, training and service — Award of academic credit — Development of policies.** — Notwithstanding the provisions of section 33-107(6)(b), Idaho Code, the state board of education, the board of regents of the university of Idaho, a board of trustees of a community college established pursuant to the provisions of section 33-2106, Idaho Code, and the state board for career technical education shall develop policies relating to the award of academic credit for education, training or service completed by an individual as a member of the armed forces or reserves of the United States, the national guard of any state, the military reserves of any state or the naval militia of any state, where such education, training or service is determined to satisfy such established policies. The boards shall work cooperatively with one another and with other state agencies as needed in the development of such policies. The boards are authorized to adopt rules as necessary for the administration of the provisions of this section.

**History.**

I.C., § 33-3727, as added by 2012, ch. 108, § 1, p. 298; am. 2016, ch. 25, § 25, p. 35.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 25, substituted “state board for career technical education” for “state board for professional-technical education” near the middle of the first sentence.

**33-3728. Organ donation notification.** — (1) An institution of higher education that receives funding from the state shall notify all students by electronic message of the option to register as an organ donor. The notice shall include instructions for how to register as an organ donor.

(2) The notice required by subsection (1) of this section shall be delivered at least twice each academic year.

**History.**

I.C., § 33-3728, as added by 2018, ch. 97, § 1, p. 206.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 3 of S.L. 2018, Chapter 96 and section 1 of S.L. 2018, Chapter 97 each enacted a section designated as § 33-3728. Because it was enacted last, the section enacted by S.L. 2018, Chapter 97 was retained as § 33-3728. The section enacted by S.L. 2018, Chapter 96 was redesignated through the use of brackets as § 33-3729. The redesignation of the enactment of S.L. 2018, Chapter 96 as § 33-3729 was made permanent by S.L. 2019, ch. 161, § 4.

**33-3729. Transfer of credits.** — (1) Any student who completes the requirements for the associate of arts or associate of science degree at a postsecondary institution accredited by a regional accrediting body recognized by the state board of education will be considered as satisfying the general education requirements, as defined by the state board of education, upon transfer to a public postsecondary institution in Idaho and will not be required to complete any additional general education requirements.

(2) A student who has completed the general education framework as defined by the state board of education, without an associate of arts or associate of science degree, and transfers from a postsecondary institution in Idaho accredited by a regional accrediting body recognized by the state board of education will not be required to complete additional general education requirements at the receiving Idaho public postsecondary institution.

(3) If a student who has completed a general education course or general education courses but has not completed the entire general education framework; or has not earned an associate of arts or associate of science degree from a postsecondary institution in Idaho accredited by a regional accrediting body recognized by the state board of education; or has earned an associate of applied science degree from a postsecondary institution in Idaho accredited by a regional accrediting body recognized by the state board of education; and transfers to a public postsecondary institution, those general education course credits will be applied towards the associated general education course requirements at the receiving public postsecondary institution.

(4) Any student who completes an associate of applied science degree at a postsecondary institution in Idaho accredited by a regional accrediting body recognized by the state board of education and meets the receiving institution's criteria for admission may pursue an interdisciplinary bachelor of applied science or a bachelor of applied technology degree focused on upper-level academic coursework at any Idaho public postsecondary institution that has such degree programs available.

(5) Receiving institutions must notify students in writing of all initial credit transfer decisions. Whenever a receiving institution makes an initial credit transfer decision that results in credits not being transferred in a manner that moves the student toward certificate or degree completion or in the manner requested by a student or applicant, the receiving institution must provide a written explanation of the credit transfer decision to the student or applicant specifying why the credits were not eligible for transfer or were not credited toward certificate or degree progress and the policies and procedures available to the student to request reconsideration of the initial credit transfer decision. Written explanations may be provided in an electronic format. Institutions shall report annually to the state board of education the number of credits that were requested to be transferred, the number of credits transferred, the number of credits that were not applied toward certificate or degree progress, including those credits that transferred as electives over the amount needed for certificate or degree progress, and such other information requested by the state board of education.

(6) No Idaho public postsecondary institution shall discriminate against any student or applicant for admission due to the number of credits that the student may be able to transfer, or has transferred, to the public college or university pursuant to this section, any other provision of law, or any rule, policy, guideline or practice of the state board of education or the public postsecondary institution.

(7) Nothing in this section shall be deemed to:

(a) Invalidate any requirement that a student earn a specified number of credits at an Idaho public college or university in order to receive a degree from the institution;

(b) Require any Idaho public postsecondary institution to grant a student a degree within a specified period of time; or

(c) Amend the provisions of [section 33-2205\(4\), Idaho Code](#), or expand the rights of career technical education students or applicants with respect to the transfer of credits from one (1) institution to another.

(8) All public postsecondary institutions are responsible for working to facilitate the effective and efficient transfer of students between Idaho public postsecondary institutions. Institutions shall publish the current



curriculum equivalencies of all courses on the state board of education transfer web portal.

**History.**

I.C., § 33-3728, as added by 2018, ch. 96, § 3, p. 204; am. 2019, ch. 161, § 4, p. 526.

**STATUTORY NOTES**

**Amendments.**

The 2019 amendment, by ch. 161, renumbered this section as § 33-3729.

**Compiler's Notes.**

Section 3 of S.L. 2018, Chapter 96 and section 1 of S.L. 2018, Chapter 97 each enacted a section designated as § 33-3728. Because it was enacted last, the section enacted by S.L. 2018, Chapter 97 was retained as § 33-3728. The section enacted by S.L. 2018, Chapter 96 was redesignated through the use of brackets as § 33-3729. The redesignation of the enactment by S.L. 2018, Chapter 96 as § 33-3729 was made permanent by S.L. 2019, ch. 161, § 4.



## **CHAPTER 38**

# **STATE INSTITUTIONS OF HIGHER EDUCATION BOND ACT**

Section.

33-3801. Short title.

33-3802. Definitions.

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33-3809. Other funds not affected.

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from pledged revenue.

33-3811. Attorney general to pass on validity of bonds — Incontestable if  
approved. [Repealed.]

33-3812. Separability.

33-3813. Construction of act.

**33-3801. Short title.** — This act may be cited as “The Educational Institutions Act of 1935.”

**History.**

1935 (1st E.S.), ch. 55, § 1, p. 145.

## STATUTORY NOTES

**Compiler’s Notes.**

The term “this act” refers to S.L. 1935 (1st E.S.), Chapter 55, which is presently compiled as §§ 33-3801 to 33-3805 and 33-3806 to 33-3813. The reference probably should be to “this chapter,” being chapter 38, title 33, Idaho Code.

## JUDICIAL DECISIONS

**Constitutionality of Appropriation.**

Session Laws 1955, ch. 277, appropriating the sum of \$100,000 to apply on dormitory revenue bond issue of \$375,000 issued by board of trustees of Northern Idaho College of Education (now Lewis-Clark State College) in 1950, under provisions of educational bond act, although since college had been closed since 1951 due to failure of legislature to appropriate funds, was not unconstitutional on the ground that it was the attempt to loan the credit of the state of Idaho for a private purpose, since it was designed and intended for a public purpose, to wit payment of a college building in furtherance of educational objectives of the state. *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

Session Laws 1955, ch. 277, which appropriate the sum of \$100,000 to apply on 1950 dormitory revenue bond issue of Northern Idaho College of Education (now Lewis-Clark State College) was not unconstitutional on the ground that the act required the state treasurer to disburse funds without examination by state board of examiners of a claim against the state, since the prior bond issue was not a claim against the state prior to enactment of

act, and none exists or can come into existence against the state by reason of the enactment. *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

**33-3802. Definitions.** — The following terms, wherever used or referred to in this act, shall have the following meaning unless a different meaning clearly appears from the context:

(a) The term “institution” shall mean any institution named in section 2 [3, [section 33-3803, Idaho Code](#)]; (b) The term “board” shall mean the state board of education, board of regents, board of trustees or other governing body, by whatever name known, of an institution; (c) The term “bonds” shall mean any bonds of an institution issued pursuant to this act; (d) The term “project” shall mean and include buildings, structures, improvements, and equipment of every kind, nature and description, which may be required by or convenient for the purposes of an institution, including, without limiting the generality of the foregoing, administration, dining, exhibition, lecture, recreational and teaching halls, or parts thereof, or additions thereto; heat, light, sewer and water works plants or systems, or parts thereof, or extensions thereto; commons, dining halls, dormitories, auditoriums, libraries, infirmaries, laundries, laboratories, metallurgical plants, museums, swimming pools, water-towers, fire prevention and fire fighting systems, gymnasias, stadia, dwellings, green houses, farm buildings, and stables, or parts thereof, or additions thereto; or any one, or more than one, or all of the foregoing, or any combination thereof; (e) The term “to acquire” shall include to purchase, to erect, to build, to construct, to reconstruct, to repair, to replace, to extend, to better, to equip, to develop, to improve, and to embellish a project; (f) The term “Recovery Act” shall mean the act of the Congress of the United States of America, approved June 16, 1933, entitled: “An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works and for other purposes,” and Acts amendatory thereof and Acts supplemental thereto, and revisions thereof, and any further Acts or Joint Resolutions of the Congress of the United States to encourage public works or to reduce unemployment or for work relief; (g) The term “federal agency” shall mean the United States of America, the President of the United States of America, the Federal Emergency Administrator of Public Works, or such other agency or agencies as may be designated or created to make loans or grants.

## **History.**

1935 (1st E.S.), ch. 55, § 2, p. 145.

## **STATUTORY NOTES**

### **Cross References.**

Bursar at state educational institutions, §§ 33-3712 and 33-3713.

Contracts for housing facilities at state educational institutions, § 33-3701.

Dining halls, § 33-3704 et seq.

Dormitory fund, § 33-3702.

### **Federal References.**

The Recovery Act of June 16, 1933, referred to in paragraph (f) of this section, was declared unconstitutional in [A.L.A. Schechter Poultry Corp. v. United States](#), 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 (1935).

### **Compiler's Notes.**

The term “this act” in the introductory paragraph and in subsection (c) refers to S.L. 1935 (1st E.S.), Chapter 55, which is presently compiled as §§ 33-3801 to 33-3805 and 33-3806 to 33-3813. The reference probably should be to “this chapter,” being chapter 38, title 33, Idaho Code.

The reference to “section 2” in paragraph (a) of this section was apparently intended as a reference to section 3 of S.L. 1935 (1st E.S.), chapter 55, and that section, as compiled as § 33-3803, has been inserted in brackets by the compiler.

## **JUDICIAL DECISIONS**

### **Sovereign Immunity.**

Neither the state nor the state board of education can plead sovereign immunity as a defense in a suit by the plaintiff to quiet title to land owned by him in which the board claimed some interest. [Lyon v. State](#), 76 Idaho 374, 283 P.2d 1105 (1955).

**Cited in:** Davis v. Moon, 77 Idaho 146, 289 P.2d 614 (1955).



**33-3803. State educational institutions as bodies politic and corporate — Powers of boards.** — Each of the following institutions is hereby constituted and confirmed a body politic and corporate and a separate and independent legal entity and is hereby further constituted and confirmed as a governmental instrumentality for the dissemination of knowledge and learning: “The Regents of the University of Idaho,” “Lewis-Clark State College,” “Idaho State University,” and “Boise State University.” A corporate purpose of every institution, in addition to any other purposes thereof, shall be to acquire any project. The powers of every institution delegated to it by this act shall be vested in and exercised by a majority of all the members of its board, and a majority of all the members of such board shall be a quorum for the transaction of any business authorized by this act, but a lesser number may adjourn and compel the attendance of absent members.

**History.**

1935 (1st E.S.), ch. 55, § 3, p. 145; am. 1969, ch. 94, § 1, p. 324.

**STATUTORY NOTES**

**Compiler’s Notes.**

The words “Lewis-Clark State College” were substituted for “Lewis-Clark Normal School” on authority of S.L. 1971, ch. 44, § 9 which is compiled as § 33-3116.

The words “Boise State University” were substituted for “Boise State College” on authority of S.L. 1974, ch. 25, § 3 which is compiled as § 33-4007.

The term “this act” in the last sentence refers to S.L. 1935 (1st E.S.), Chapter 55, which is presently compiled as §§ 33-3801 to 33-3805 and 33-3806 to 33-3813. The reference probably should be to “this chapter,” being chapter 38, title 33, Idaho Code.

Section 3 of S.L. 1969, ch. 94 read: “If any provision of this act or the application thereof to any person or circumstance is held invalid, such

invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.”

### **Effective Dates.**

Section 4 of S.L. 1969, ch. 94 declared an emergency. Approved March 7, 1969.

## **JUDICIAL DECISIONS**

### **Immunity from Suit.**

The state did not waive its **Eleventh Amendment** immunity as to the state university by § 33-3003 and this section. **Ferguson v. Greater Pocatello Chamber of Commerce, Inc.**, 647 F. Supp. 190 (D. Idaho 1985), *aff'd*, 848 F.2d 976 (9th Cir. 1988).

The power of the University of Idaho to sue or be sued is not a waiver of its **eleventh amendment** immunity. **Mazur v. Hymas**, 678 F. Supp. 1473 (D. Idaho 1988).

**Cited in:** **Davis v. Moon**, 77 Idaho 146, 289 P.2d 614 (1955).

**33-3804. Powers and duties of state institutions.** — Every institution shall have power in its proper name as aforesaid:

- (a) To have a corporate seal and alter the same at pleasure;
- (b) To sue and be sued;
- (c) To acquire by purchase, gift or the exercise of the right of eminent domain and hold and dispose of real or personal property or rights or interests therein and water rights;
- (d) To make contracts and to execute all instruments necessary or convenient;
- (e) To acquire any project or projects, and to own, operate, and maintain such project;
- (f) To accept grants of money or materials or property of any kind from a federal agency, upon such terms and conditions as such federal agency may impose;
- (g) To borrow money, with or without the issuance of bonds and to provide for the payment of the same and for the rights of the holders of such bonds and/or of any other instrument of such indebtedness, including the power to fix the maximum rate of interest to be paid thereon and to warrant and indemnify the validity and tax exempt character;
- (h) To perform all acts and do all things necessary or convenient to carry out the powers herein granted, to obtain loans or grants or both from any federal agency, and to accomplish the purposes of [sections 33-3801 — 33-3813, Idaho Code](#), and secure the benefits of the Recovery Act;
- (i) To issue refunding bonds, for the purpose of paying, redeeming, or refunding any outstanding bonds theretofore issued under authority of this chapter. Refunding bonds so issued shall have such details, shall bear such rate or rates of interest and shall be otherwise issued and secured as provided by the board authorizing the issuance of such bonds and as otherwise provided in this chapter, provided, however, that such changes in the security and revenues pledged to the payment thereof may be made by such board as may be provided by it in the proceedings authorizing such

bonds, but in no event shall such refunding bonds ever be secured by revenues not authorized by this chapter to be pledged to the payment of bonds issued for other than refunding purposes. Refunding bonds issued hereunder may be exchanged for a like principal amount of the bonds to be refunded, may be sold in the manner provided in this chapter for the sale of other bonds, or may be exchanged in part and sold in part. If sold, the proceeds of such bonds may be deposited in escrow for the payment of the bonds to be refunded, provided such bonds mature or are callable for redemption under their terms within six (6) months from the date of the delivery of the refunding bonds. No refunding bonds may be issued hereunder in a principal amount in excess of the principal amount of the bonds to be refunded nor may any bonds not maturing or callable for redemption under their terms as above provided be refunded hereunder without the consent of the holders thereof. Refunding bonds so authorized and issued may in the discretion of the board be combined with other bonds to be authorized and issued under this chapter, and a single issue of bonds may be so authorized in part for improvement and in part for refunding purposes.

(j) In connection with borrowing without the issuance of bonds, to fix fees, rents or other charges for utilization of any facility or project being financed by said borrowing and to pledge the same, together with any other revenue from such project or facility, as collateral for repayment of principal and interest in the same manner and to the same extent as provided in this chapter for securing the payment of bonds issued pursuant to this chapter.

### **History.**

1935 (1st E.S.), ch. 55, § 4, p. 145; am. 1941, ch. 154, § 1, p. 308; am. 1965, ch. 37, § 1, p. 59; am. 1975, ch. 118, § 1, p. 246.

## **STATUTORY NOTES**

### **Federal References.**

The Recovery Act, referred to in paragraph (h), was declared unconstitutional in [\*A.L.A. Schechter Poultry Corp. v. United States\*, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 \(1935\)](#).

## JUDICIAL DECISIONS

### **Immunity from Suit.**

The power of the University of Idaho to sue or be sued is not a waiver of its **eleventh amendment** immunity. **Mazur v. Hymas**, 678 F. Supp. 1473 (D. Idaho 1988).

## RESEARCH REFERENCES

**A.L.R.** — Revenue bonds: validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private religious-affiliated colleges or universities. **95 A.L.R.3d 1000.**

**33-3805. Authorization, issuance, maturity, interest and sale of bonds.** — When the board shall find the proposed project or projects to be necessary for the proper operation of the institution and economically feasible and such finding is recorded in its minutes, the bonds therefor shall be authorized by resolution of the board. The bonds may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, not exceeding forty (40) years from the respective dates thereof, may mature in such amount or amounts, may bear interest, at such rate or rates to be determined by the board, may be in such form, either coupon or registered, may carry such registration and such conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, as such resolution or other resolutions may provide. The bonds may be sold at a public or private sale at not less than par and accrued interest, in a manner to be provided by the board. The bonds shall be fully negotiable within the meaning and for all purposes of the Uniform Commercial Code.

**History.**

1935 (1st E.S.), ch. 55, § 5, p. 145; am. 1953, ch. 90, § 1, p. 120; am. 1965, ch. 37, § 2, p. 59; am. 1967, ch. 272, § 7, p. 745; am. 1970, ch. 28, § 1, p. 54; am. 1979, ch. 47, § 1, p. 136.

**STATUTORY NOTES**

**Cross References.**

Negotiable instruments under the Uniform Commercial Code, § 28-3-101 et seq.

**Compiler's Notes.**

Section 33 of S.L. 1967, ch. 272, read: "Transactions validly entered into before the effective date specified in section 32 and the rights, duties and interest flowing from them remain valid thereafter and may be determined,

completed, consummated or enforced as required or permitted by any statute amended by this act as though such amendment had not occurred.”

Section 3 of S.L. 1965, ch. 37 read: “If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.”

### **Effective Dates.**

Section 2 of S.L. 1953, ch. 90 declared an emergency. Approved March 2, 1953.

Section 4 of S.L. 1965, ch. 37 declared an emergency. Approved February 17, 1965.

Section 32 of S.L. 1967, ch. 272 provided that the act should become effective at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code.

Section 2 of S.L. 1979, ch. 47 declared an emergency. Approved March 17, 1979.

## **JUDICIAL DECISIONS**

### **Constitutionality.**

Acts 1935, (1st E.S.), ch. 55 authorizing the board of regents of the University of Idaho as a corporation to issue bonds to be amortized over a thirty-year period from revenues accruing from project financed by bond proceeds does not violate the constitutional limitations on indebtedness of subdivisions of the state, since the board of regents is not within the scope of the constitutional limitation. *State ex rel. Miller v. State Bd. of Educ.*, 56 Idaho 210, 52 P.2d 141 (1935).

**33-3805A. Procedure prior to authorization. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 33-3805A, as added by 1989, ch. 416, § 1, p. 1017, was repealed by S.L. 2008, ch. 161, § 1.



**33-3806. Provisions for payment of bonds.** — Any institution in connection with the issuance of the bonds or in order to secure the payment of such bonds and interest thereon, shall have power by resolution of its board:

(a) To fix and maintain (1) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to be served by any project, (2) matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institutions, and from the public in general, for the facilities afforded by such institution (which shall be uniform to all those similarly situated), (3) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, existing buildings, stadia, and other structures at any institution which issues bonds hereunder to acquire a project, which fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by such buildings, stadia and other structures shall be the same as those applicable to any project similar in nature and purpose to such existing buildings, stadia, and other structures; provided, however, that as between such project and the existing buildings at the institution there may be allowed reasonable differentials based on the condition, type, location and relative convenience of such project and such existing buildings, but such differentials shall be uniform as to all such students or faculty members and others similarly accommodated;

(b) To provide that bonds issued hereunder shall be secured by a first, exclusive and closed lien on the income and revenue derived from, and shall be payable from, (1) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project, and any existing buildings, stadia, and other structures, and (2) matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution,

and (3) the proceeds of grants of funds and moneys received or to be received from the United States of America, or any agency or instrumentality thereof, pursuant to agreements entered into between the board and the United States of America, or any agency or instrumentality thereof, prior to the issuance of the bonds.

(c) To pledge and assign to, or in trust for the benefit of, the holder or holders of the bonds issued hereunder an amount of the income and revenue derived from (1) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project, and any existing buildings, stadia, and other structures, and (2) matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, and (3) the proceeds of grants of funds and moneys received or to be received from the United States of America, or any agency or instrumentality thereof, pursuant to agreements entered into between the board and the United States of America, or any agency or instrumentality thereof, prior to the issuance of the bonds, which shall be sufficient to pay when due the bonds issued hereunder to acquire such project, and interest thereon, and to create and maintain reasonable reserves therefor;

(d) To covenant with or for the benefit of the holder or holders of bonds issued hereunder to acquire any project that so long as any such bonds shall remain outstanding and unpaid, such institution will fix, maintain and collect in such installments as may be agreed upon (1) an amount of the fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project, and any existing buildings, stadia, and other structures which, together with (2) an amount of the matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, and (3) the proceeds of grants of funds and moneys received or to be received from the United States of America, or any agency or instrumentality thereof, pursuant to agreements entered into between the board and the United States of America, or any agency or instrumentality

thereof, prior to the issuance of the bonds, shall be sufficient to pay when due the bonds issued hereunder to acquire such project, and interest thereon, and to create and maintain reasonable reserves therefor, and to pay the costs of operation and maintenance of such project, including, but not limited to, reserves for extraordinary repairs, insurance and maintenance, which costs of operation and maintenance shall be determined by the board in its absolute discretion;

(e) To make and enforce and agree to make and enforce parietal rules that shall insure the use of any project by all students in attendance at such institution to the maximum extent to which such project is capable of serving such students, or if such project is designed for occupancy as living quarters for the faculty members, by as many faculty members as may be served thereby;

(f) To covenant that so long as any of the bonds issued hereunder shall remain outstanding and unpaid, it will not, except upon such terms and conditions as may be determined (1) voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the bonds issued hereunder upon any of the income and revenues derived from fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to be served by, any project and any existing buildings, stadia, and other structures, and from matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, or (2) convey or otherwise alienate the project to acquire which such bonds shall have been issued, or the real estate upon which such project shall be located, except at a price sufficient to pay all the bonds then outstanding issued hereunder to acquire such project and interest accrued thereon, and then only in accordance with any agreements with the holder or holders of such bonds, or (3) mortgage or otherwise voluntarily create or cause to be created any encumbrance on the project to acquire which such bonds shall have been issued or the real estate upon which it shall be located.

(g) To covenant as to the procedure by which the terms of any contract with a holder or holders of such bonds may be amended or rescinded, the

amount or percentage of bonds the holder or holders of which must consent thereto, and the manner in which such consent may be given.

(h) To vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of bonds issued hereunder, and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to the bonds; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute events of default and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of bonds of any specified amount or percentage of such bonds may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate.

(i) To vest in a trustee or trustees or the holder or holders of any specified amount or percentage of bonds the right to apply to any court of competent jurisdiction for and have granted the appointment of a receiver or receivers of the income and revenue pledged and assigned to or for the benefit of the holder or holders of such bonds, which receiver or receivers may have and be granted such powers and duties as such court may order or decree which powers and duties may include any and all such powers and duties as are usually granted under the laws of the state of Idaho to a receiver or receivers appointed in connection with the foreclosure of a mortgage made by a private corporation.

(j) To make covenants with any federal agency to perform any and all acts and to do any and all such things as may be necessary or convenient or desirable in order to secure its bonds, or as may in the judgment of the board tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated herein, it being the intention hereof to give any institution issuing bonds pursuant to [sections 33-3801 — 33-3813, Idaho Code](#), power to make all covenants, to perform all acts and to do all things, not inconsistent with the constitution of the state of Idaho, in the issuance of the bonds and for their security, including any and all powers granted to a private corporation under the laws of the state of Idaho.

**History.**

1935 (1st E.S.), ch. 55, § 6, p. 145; am. 1970, ch. 28, § 2, p. 54.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 3 of S.L. 1970, ch. 28 declared an emergency. Approved February 17, 1970.

## **JUDICIAL DECISIONS**

**Cited in:** *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

**33-3807. Deposit of proceeds of bonds.** — No moneys derived from the sale of bonds of any institution or otherwise borrowed by such institution under the provisions of sections 33-3801 — 33-3813, [Idaho Code,] shall be required to be paid into the state treasury but shall be deposited by the treasurer or other fiscal officer of the institution, subject to the public depository law. Such money shall be disbursed as may be directed by the board and in accordance with the terms of any agreements with the holder or holders of any bonds. This section shall not be construed as limiting the power of the institution to agree in connection with the issuance of any of its bonds as to the custody and disposition of the moneys received from the sale of such bonds or the income and revenue of the institution pledged and assigned to or in trust for the benefit of the holder or holders thereof.

**History.**

1935 (1st E.S.), ch. 55, § 7, p. 145; am. 1969, ch. 255, § 2, p. 787.

**STATUTORY NOTES**

**Cross References.**

Public depository law, § 57-101 et seq.

**Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.

**33-3808. Validity of bonds.** — The bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the institution issuing the same. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings to acquire the project financed by the bonds or taken in connection therewith.

**History.**

1935 (1st E.S.), ch. 55, § 8, p. 145.

**33-3809. Other funds not affected.** — Nothing in sections 33-3801 — 33-3813[, Idaho Code,] contained shall be construed to authorize any institution to contract a debt on behalf of, or in any way to obligate, the state of Idaho, or to pledge, assign or encumber in any way, or to permit the pledging, assigning or encumbering in any way of, appropriations made by the legislature, or revenue derived from the investment of the proceeds of the sale, and from the rental of such lands as have been set aside by the Idaho Admission Bill approved July 3, 1890, or other legislative enactments of the United States, for the use and benefit of the respective state educational institutions.

**History.**

1935 (1st E.S.), ch. 55, § 9, p. 145.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

The Idaho Admission Bill of July 3, 1890, referred to in this section, is compiled in the first volume of the Idaho Code.

**JUDICIAL DECISIONS**

**Cited in:** [Davis v. Moon, 77 Idaho 146, 289 P.2d 614 \(1955\).](#)



**33-3810. Bonds and other debt not obligations of state — Payable only from pledged revenue.** — All bonds issued and other debt incurred pursuant to this act shall be exclusively obligations of the institution issuing such bonds or incurring such other debt payable only in accordance with the terms thereof and shall not be obligations general, special or otherwise of the state of Idaho. Such bonds or other debt incurred shall not constitute a debt, legal or moral or otherwise of the state of Idaho, shall so recite on their face or on the first page of any evidence of indebtedness, and shall not be enforceable against the state, nor shall payment thereof be enforceable out of any funds of the institution issuing said bonds or incurring such other debt other than the income and revenues, if any, pledged and assigned to, or in trust for the benefit of, the holder or holders of such bonds or other evidence of indebtedness.

**History.**

1935 (1st E.S.), ch. 55, § 10, p. 145; am. 1975, ch. 118, § 2, p. 246.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 3 of S.L. 1975, ch. 118, read: “It is hereby declared to be in the public interest of the state of Idaho, for the benefit and welfare of its people and in furtherance of education and learning that the powers of institutions to borrow under ‘The Educational Institutions Act of 1935’ be clarified and further elaborated in the furtherance of the credit of said institutions and to provide certainty and stability for the financing of approved projects other than by bonded indebtedness, thus ensuring advantageous flexibility to the management and development of said institutions and the availability of financing upon the best terms and rates available in consideration of the credit and economic feasibility of projects so funded. It is further declared that this act is the acknowledgment and clarification of powers to borrow and provide for repayment heretofore duly vested in said institutions and nothing herein shall be construed or interpreted to the prejudice or detriment of credit or loans outstanding on or closed or negotiated prior to the effective date hereof.”

The term “this act” near the beginning of the section refers to S.L. 1935 (1st E.S.), Chapter 55, which is presently compiled as §§ 33-3801 to 33-3805 and 33-3806 to 33-3813. The reference probably should be to “this chapter,” being chapter 38, title 33, Idaho Code.

### **Effective Dates.**

Section 4 of S.L. 1975, ch. 118 declared an emergency. Approved March 26, 1975.

## **JUDICIAL DECISIONS**

### **Analysis**

[Appropriation to pay.](#)

[Income.](#)

[Appropriation to Pay.](#)

Session Laws 1955, ch. 277, appropriating the sum of \$100,000 to apply on dormitory revenue bond issue of \$375,000 issued by board of trustees of Northern Idaho College of Education (now Lewis-Clark State College) in 1950, under provisions of educational bond act, although college had been closed since 1951 due to failure of legislature to appropriate funds, was not unconstitutional on the ground that it was the attempt to loan the credit of the state of Idaho for a private purpose, since it was designed and intended for a public purpose, to wit payment of a college building in furtherance of educational objectives of the state. [Davis v. Moon, 77 Idaho 146, 289 P.2d 614 \(1955\).](#)

[Income.](#)

A statute authorizing board of regents of the University of Idaho to borrow money from federal agencies to improve plant and to issue bonds enforceable only out of “income” and revenues pledged to bondholders authorized pledging net income of dormitories donated to regents and otherwise unencumbered for payment of bonds for proposed university infirmary, and authorized pledging of net, but not gross, income from the operation of infirmary to bondholders, since “income” means gain or profit in common parlance. [State ex rel. Miller v. State Bd. of Educ., 56 Idaho 210, 52 P.2d 141 \(1935\).](#)

**33-3811. Attorney general to pass on validity of bonds — Incontestable if approved. [Repealed.]**

Repealed by S.L. 2014, ch. 251, § 2, effective July 1, 2014.

**History.**

1935 (1st E.S.), ch. 55, § 11, p. 145.

**33-3812. Separability.** — If any provision of sections 33-3801 — 33-3813, [Idaho Code,] or the application thereof to any person, body or circumstances shall be held invalid, the remainder of the act and the application of such provision to persons, bodies, or circumstances other than those as to which it shall have been held invalid shall not be affected thereby.

**History.**

1935 (1st E.S.), ch. 55, § 12, p. 145.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

The term “the act” near the middle of this section refers to S.L. 1935 (1st E.S.), Chapter 55, which is presently compiled as §§ 33-3801 to 33-3805 and 33-3806 to 33-3813. The reference probably should be to “this chapter,” being chapter 38, title 33, Idaho Code.

**33-3813. Construction of act.** — The powers conferred by this act shall be in addition to and supplemental to, and the limitations imposed by this act shall not affect the powers conferred by any other law, general or special, and bonds may be issued hereunder notwithstanding the provisions of any other such law and without regard to the procedure required by any other such law. Insofar as the provisions of the act are inconsistent with the provisions of any other law, general or special, the provisions of sections 33-3801 — 33-3813[, Idaho Code,] shall be controlling.

**History.**

1935 (1st E.S.), ch. 55, § 13, p. 145.

**STATUTORY NOTES**

**Compiler's Notes.**

The terms “this act” and “the act” throughout the section refer to S.L. 1935 (1st E.S.), Chapter 55, which is presently compiled as §§ 33-3801 to 33-3805 and 33-3806 to 33-3813. The reference probably should be to “this chapter,” being chapter 38, title 33, Idaho Code.

The bracketed insertion near the end of the section was added by the compiler to conform to the statutory citation style.

**Effective Dates.**

Section 15 of S.L. 1935 (1st E.S.), ch. 55 declared an emergency. Approved April 1, 1935.



## **CHAPTER 39**

### **IDAHO ARCHAEOLOGICAL SURVEY**

Section.

33-3901. Idaho archaeological survey created — Purpose — Definition — Advisory board.

33-3902. Meetings — Office — State archaeologist.

33-3903. Duties — Publications — Cooperation with other agencies — Satellite offices.

33-3904. Reports.

33-3905. Archaeological survey account.

33-3906 — 33-3910. [Repealed.]

**33-3901. Idaho archaeological survey created — Purpose — Definition — Advisory board.** — (1) There is hereby created the Idaho archaeological survey, to be administered as a special cooperative program under the authority of the board of trustees of the Idaho state historical society and the board of regents of the university of Idaho. It is the policy of the state of Idaho that the archaeological resources recovered from within the state, and their associated documentation, be accorded long-term curation within the state to ensure their continued accessibility by the educational programs of the state universities and for the public benefit of the citizens of the state of Idaho. It is a policy of the state of Idaho that archaeological inventories conducted within the state be documented in a comprehensive database accessible by educational programs and for other public purposes consistent with the protection of these resources. The survey shall be the lead state entity for the compilation, coordination, preservation and dissemination of archaeological survey data and long-term curation of collections for Idaho. This information is to be acquired through field and laboratory investigations by the staff of the survey and through cooperative programs with other governmental and private agencies, including the educational programs at the state universities which recover, use and care for archaeological materials. Nothing in this chapter shall limit the established role of the state universities in archaeological research and educational programs using archaeological materials.

(2) For the purposes of this chapter “archaeological resources” refer to both cultural remains and associated environmental materials recovered by archaeological studies and to sites on the landscape containing materials potentially supportive of anthropological or historical archaeological studies.

(3) There is hereby established an advisory board for the survey which shall consist of the following members: the Idaho state archaeologist, who shall be director of the survey and nonvoting chairman of the advisory board, the academic vice presidents of the university of Idaho, Idaho state university and Boise state university or their designated representatives; the governor of the state of Idaho or his designated representative; and a member of the public who shall be elected by a majority vote of the



advisory board and who shall serve for a term of two (2) years. Should a vacancy occur in the public member position, the advisory board shall appoint a replacement to serve the remainder of the term. Members of the advisory board shall be compensated as provided in [section 59-509\(b\), Idaho Code](#), which compensation shall be paid from the archaeological survey account created in [section 33-3905, Idaho Code](#). A quorum of the advisory board shall be required to be present to conduct business.

### **History.**

[I.C., § 33-3901](#), as added by 1992, ch. 116, § 1, p. 387; am. 2009, ch. 167, § 6, p. 497.

## **STATUTORY NOTES**

### **Cross References.**

Board of regents of university of Idaho, § 33-101 et seq.

State historical society, § 67-4123 et seq.

### **Prior Laws.**

Former §§ 33-3901 to 33-3905, which comprised S.L. 1893, p. 14, §§ 1 to 5; reen. 1899, p. 169, §§ 1 to 5; reen. R.C. & C.L., §§ 3027 to 3031; C.S., §§ 4888 to 4892; S.L. 1931, ch. 21, § 1, p. 48; I.C.A., §§ 32-3301 to 32-3305; S.L. 1943, ch. 4, § 1, p. 6; S.L. 1949, ch. 40, § 1, p. 64; S.L. 1965, ch. 60, § 1, p. 96, were repealed by S.L. 1979, ch. 159, § 2.

### **Amendments.**

The 2009 amendment, by ch. 167, in the first sentence in subsection (1), substituted “board of trustees of the Idaho state historical society” for “Idaho state board of education”; and throughout subsection (3), inserted “advisory” preceding “board”.

### **Compiler’s Notes.**

The state archaeologist, referred to in subsection (3), is a staff member of the Idaho state historic preservation office, which is a division of the Idaho state historical society. See <https://history.idaho.gov>.

**33-3902. Meetings — Office — State archaeologist.** — The advisory board shall hold annual meetings at the Idaho state historical society, the university of Idaho, Idaho state university or Boise state university on the first Monday of June of each year and shall hold such other meetings as it may deem necessary. The chief office of the survey and the office of its secretary shall be maintained at the Idaho state historical society. The professional archaeologist holding the position of state archaeologist in the Idaho state historical society is designated director of the survey.

**History.**

I.C., § 33-3902, as added by 1992, ch. 116, § 1, p. 387; am. 2009, ch. 167, § 7, p. 497.

**STATUTORY NOTES**

**Cross References.**

State historical society, § 67-4123 et seq.

**Prior Laws.**

Former § 33-3902 was repealed. See Prior Laws, § 33-3901.

**Amendments.**

The 2009 amendment, by ch. 167, inserted “advisory” near the beginning of the first sentence.

**33-3903. Duties — Publications — Cooperation with other agencies — Satellite offices.** — It shall be the duty of the Idaho archaeological survey to establish standards for documenting archaeological inventories; to establish standards for curation of archaeological collections; to conduct statewide studies in the field; to perform laboratory studies; to prepare and publish reports on the archaeological resources of the state; to perform analyses and long-term curation of archaeological collections and site inventory information; to determine and distribute to participating institutions an equitable portion of survey and inventory funds from the federal historic preservation funds received by the state of Idaho; and to fix a price upon printed reports and deposit receipts from sales in the archaeological survey account to be used for the preparation and publication of reports of the survey and for no other purpose. The survey shall be allowed to seek and accept funded projects from and form cooperative programs with state and federal agencies and private funding sources for support of the survey's inventory and curation activities. All moneys received from these projects shall be deposited in the archaeological survey account and shall be used for the aforementioned projects and services. The survey shall be allowed to have satellite offices at the university of Idaho, Idaho state university and Boise state university for the purpose of caring for archaeological collections or survey information or both.

**History.**

I.C., § 33-3903, as added by 1992, ch. 116, § 1, p. 387.

**STATUTORY NOTES**

**Cross References.**

Archaeological survey account, § 33-3905.

**Prior Laws.**

Former § 33-3903 was repealed. See Prior Laws, § 33-3901.

**33-3904. Reports.** — The Idaho archaeological survey shall annually, on or before the first day of January, make to the governor of the state and to the board of trustees of the Idaho state historical society and the board of regents of the university of Idaho a report detailing major events during the preceding year concerning the archaeological resources of the state, a report of its expenditures and of the work of the survey during the preceding year, and budget requests for the following year; and it shall make a similar report of its doings and its expenditures to the state legislature through the legislative council.

**History.**

I.C., § 33-3904, as added by 1992, ch. 116, § 1, p. 387; am. 2009, ch. 167, § 8, p. 497.

**STATUTORY NOTES**

**Cross References.**

Board of regents of university of Idaho, § 33-101 et seq.

Legislative council, § 67-427 et seq.

State historical society, § 67-4123 et seq.

**Prior Laws.**

Former § 33-3904 was repealed. See Prior Laws, § 33-3901.

**Amendments.**

The 2009 amendment, by ch. 167, substituted “board of trustees of the Idaho state historical society” for “executive director of the Idaho state board of education.”

**33-3905. Archaeological survey account.** — There is hereby created in the dedicated fund of the state treasury, the archaeological survey account. Moneys in the account shall consist of appropriations, gifts, grants, bequests or moneys from any other source and shall be utilized by the state archaeological survey to implement and carry out the provisions of this chapter. Moneys in the account may be expended only pursuant to appropriation by the legislature except for funds received under contracts and grants which may be expended for those purposes without action by the legislature.

**History.**

I.C., § 33-3905, as added by 1992, ch. 116, § 1, p. 387.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-3905 was repealed. See Prior Laws, § 33-3901.

**33-3906 — 33-3910. Powers of corporations — Election and qualifications of directors and trustees — Powers of directors — Religious tests prohibited — Corporations for private gain prohibited. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised 1893, p. 14, §§ 6 to 10; reen. 1899, p. 169, §§ 6 to 10; reen. R.C. & C.L., §§ 3032 to 3036; C.S., §§ 4893 to 4897; 1931, ch. 21, § 2, p. 48; I.C.A., §§ 32-3306 to 32-3310, were repealed by S.L. 1979, ch. 159, § 2.



## **CHAPTER 40**

### **BOISE STATE UNIVERSITY**

#### **Section.**

33-4001. Boise State University established — Standards — Professional-technical programs.

33-4002. State board of education as a succeeding board of trustees.

33-4003. Means and methods to effectuate transition — Assumption of liabilities — Exception.

33-4004. Assumption of construction bonds by state board of education.

33-4005. Powers and duties of the board of trustees.

33-4006. Junior college district to remain until all bonds retired — Board of trustees to retain authority required to effectuate purpose of act.  
[Repealed.]

33-4007. Name change.



**33-4001. Boise State University established — Standards — Professional-technical programs.** — The college now known as Boise state college and previously operated and conducted by Boise community college district in Ada County, Idaho, known as Boise college, shall be established in the city of Boise, Idaho, as an institution of higher education of the state of Idaho, for the purpose of giving instruction in college courses in sciences, arts and literature, professional, technical and other courses of higher education, such courses being those that are usually included in colleges and universities leading to the granting of appropriate collegiate degrees, said college to be known as Boise State University. The standards of the courses and departments maintained in said university shall be at least equal to, or on a parity with those maintained in other similar colleges and universities in Idaho and other states. All programs in the professional-technical departments, including terminal programs now established and maintained, may be continued and such additional professional-technical and terminal programs may be added as the needs of the students attending such university taking professional-technical and terminal programs shall warrant, and the appropriate certificate for completion thereof shall be granted. The courses offered and degrees granted at said university shall be determined by the board of trustees.

**History.**

1967, ch. 369, § 1, p. 1062; am. 1974, ch. 25, § 1, p. 803; am. 1999, ch. 329, § 35, p. 852.

**33-4002. State board of education as a succeeding board of trustees.**

— The general supervision, government and control of said Boise state university shall be vested in the state board of education which shall act as the board of trustees of said university.

**History.**

1967, ch. 369, § 2, p. 1062; am. 1974, ch. 25, § 2, p. 803.

**33-4003. Means and methods to effectuate transition — Assumption of liabilities — Exception.** — The board of trustees of Boise Junior College District are hereby empowered, authorized and directed to convey and assign all property rights, contracts and other tangible and intangible assets of the district, and/or college to the state board of education as a succeeding board of trustees of said college provided in Section 2 [33-4002, Idaho Code,] of this act. The state board of education and the board of trustees of Boise Junior College District are hereby authorized and directed to confer between themselves and with third parties as may be necessary, to determine and agree upon appropriate means and methods to effectuate the orderly transfer of Boise College on January 1, 1969, as herein provided and each of said boards are hereby authorized and directed to have prepared and execute all instruments and documents necessary therefor. The respective boards shall, immediately after the passage of this act confer, cooperate and agree upon all contracts and other matters which will or may carry over beyond January 1, 1969 and each board is authorized to execute any and all documents, agreements, employment contracts and do all things necessary, both before and after January 1, 1969 to effectuate the transition of said college herein provided with the least interference and disruption of the educational processes of said college. On and after January 1, 1969 the state board of education as the board of trustees shall assume the liabilities and responsibilities of Boise Junior College District excepting, however, the liabilities of the district for the payment of principal and interest of general obligation bonds theretofore issued by the district.

**History.**

1967, ch. 369, § 3, p. 1062.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the end of the first sentence was added by the compiler to explain the reference in the enacted text.

The term “this act”, as used in this section, refers to S.L. 1967, Chapter 369, which is presently compiled as §§ 33-4001 to 33-4005. Pursuant to S.L. 1967, ch. 369, § 7, that act was effective upon passage and approval, April 10, 1967.

**33-4004. Assumption of construction bonds by state board of education.** — On or after January 1, 1969, Boise Junior College Housing Commission and the state board of education shall negotiate and agree with third persons holding revenue bonds issued by Boise Junior College Housing Commission for the construction of dormitory, residence and student union facilities for the assumption of said bonds by the state board of education in such manner as may be agreeable and lawful. The state board of education is hereby authorized, if required to effectuate this act, to issue its bonds for the refunding of the bonds of Boise Junior College Housing Commission issued prior to January 1, 1969, in the same manner that it may refund bonds issued by it as provided in the Educational Institutions Act of 1935, being Chapter 38 of Title 33, Idaho Code.

**History.**

1967, ch. 369, § 4, p. 1062.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act”, as used in this section, refers to S.L. 1967, Chapter 369, which is presently compiled as §§ 33-4001 to 33-4005.

**33-4005. Powers and duties of the board of trustees.** — The board of trustees of said college upon proper conveyance thereof, shall have all rights and title to real estate and personal property of said college, control over all buildings, power to elect presidents and contract with faculty of said college, supervise students and all powers and duties with reference to said college as are now granted by the statutes of the state of Idaho to the board of regents of the University of Idaho, and the board of trustees of Idaho State University as set forth in Chapters 28, 29, 30, 36, 37 and 38 of Title 33, Idaho Code, as the same may hereafter be amended, are fully empowered to exercise said powers and assume such duties with relation to said college from and after January 1, 1969, unless otherwise specifically authorized herein to the exercise of said powers prior to said date.

**History.**

1967, ch. 369, § 5, p. 1062.

**33-4006. Junior college district to remain until all bonds retired — Board of trustees to retain authority required to effectuate purpose of act. [Repealed.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section, which comprised 1967, ch. 369, § 6, p. 1062, was repealed by S.L. 1987, ch. 39, § 1.

**33-4007. Name change.** — Whenever the name of Boise college or Boise state college shall appear in any statute, such statute is hereby amended to read Boise state university as fully and completely as though said name in said statute was specifically amended herein, and all such statutes shall be construed to refer to and mean Boise state university.

**History.**

1974, ch. 25, § 3, p. 803.

**STATUTORY NOTES**

**Effective Dates.**

Section 4 of S.L. 1974, ch. 25, declared an emergency. Approved February 22, 1974.





## **CHAPTER 41**

### **INTERSTATE COMPACTS**

Section.

33-4101. Interstate compact for education enacted into law.

33-4102. Establishing the Idaho Education Council.

33-4103. Designating the state agency to receive and file bylaws.

33-4104. Interstate agreement on qualification of educational personnel.

33-4105. “Designated state official.”

33-4106. Contracts kept on file — Published.

**33-4101. Interstate compact for education enacted into law.** — The Interstate Compact for Education established by the Education Commission of the States is hereby enacted into law and entered into with all other jurisdictions legally joining therein, in the form substantially as follows:

## INTERSTATE COMPACT FOR EDUCATION

### ARTICLE I—PURPOSE AND POLICY

A. It is the purpose of this compact to:

1. Establish and maintain close cooperation and understanding among executive, legislative, professional, educational and lay leadership on a nationwide basis at the state and local levels.
2. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.
3. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and records of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.
4. Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

B. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

C. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as

well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

## ARTICLE II—STATE DEFINED

As used in this compact, “state” means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

## ARTICLE III—THE COMMISSION

A. The Education Commission of the States, hereinafter called “the commission,” is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and non-public educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten non-voting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

B. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III (J).

C. The commission shall have a seal.

D. The commission shall elect annually, from among its members a chairman, who shall be a governor, a vice chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

F. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

G. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and

dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (F) of this Article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

H. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

I. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

J. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

#### ARTICLE IV—POWERS

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3. Develop proposals for adequate financing of education as a whole and at each of its many levels.

4. Conduct or participate in research of the types referred to in this Article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact

organizations for higher education, and other agencies and institutions, both public and private.

5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

#### ARTICLE V—COOPERATION WITH FEDERAL GOVERNMENT

A. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

#### ARTICLE VI—COMMITTEES

A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee shall consist of governors, one-fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: sixteen for one year and sixteen for

two years. The chairman, vice chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

B. The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

C. The commission may establish such additional committees as its bylaws may provide.

## ARTICLE VII—FINANCE

A. The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

B. The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

C. The commission shall not pledge the credit of any party states [state]. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III (G) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article



III (G) thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

E. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

F. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### ARTICLE VIII—ELIGIBLE PARTIES; ENTRY INTO AND WITHDRAWAL

A. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term, “governor,” as used in this compact, shall mean the closest equivalent official of such jurisdiction.

B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the

commission an equitable share of the financial support of the commission from any source available to him.

D. Except for a withdrawal effective on December 31, 1967 in accordance with paragraph C of this Article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

## ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

### **History.**

1967, ch. 15, § 1, p. 24.

## STATUTORY NOTES

### **Compiler's Notes.**

Beginning in 1985, the position referred to in this compact as “executive director” has been designated as “president” by the education commission of the states. *See <http://www.ecs.org>.*

Notwithstanding the provision of Article VI, the steering committee of the education commission of the states is now made up of one representative from each member state (all states, except Oregon, South

Dakota, and Washington), and any vacancies on the committee are to be filled by appointment by the chair of the commission.

The bracketed insertion in the first sentence in paragraph C of Article VII was added by the compiler to correct the enacting legislation.

**33-4102. Establishing the Idaho Education Council.** — There is hereby established the “Idaho Education Council” composed of the members of the “Education Commission of the States” representing this state, and eight other persons appointed by the governor for terms of three years. Such other person shall be selected so as to be broadly representative of professional and lay interest within this state having the responsibilities for, knowledge with respect to, and interest in educational matters. The chairman shall be designated by the governor from among its members. The council shall meet on the call of its chairman or at the request of a majority of its members, but in any event the council shall meet not less than three times in each year. The council may consider any and all matters relating to recommendations of the education commission of the states and the activities of the members in representing the state thereon.

**History.**

1967, ch. 15, § 2, p. 24.

**33-4103. Designating the state agency to receive and file bylaws. —**  
Pursuant to Article III (I) of the compact, the commission shall file a copy of its bylaws and any amendment thereto with the state board of education.

**History.**

1967, ch. 15, § 3, p. 24.

**STATUTORY NOTES**

**Compiler's Notes.**

The compact, referred to in this section, is contained in § 33-4101.

Section 4 of S.L. 1967, ch. 15 provided that duly authenticated copies of this act should, upon its approval, be transmitted by the secretary of state to the governor of each state, the Attorney-general and the Secretary of State of the United States, and the council of state governments.

**Effective Dates.**

Section 5 of S.L. 1967, ch. 15 declared an emergency. Approved February 10, 1967.

**33-4104. Interstate agreement on qualification of educational personnel.** — The interstate agreement on qualification of educational personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein as outlined in the national association of state directors of teacher education and certification (NASDTEC) interstate agreement, 2010 — 2015 in the form substantially as follows:

#### ARTICLE I, PURPOSE.

The purpose of this interstate agreement is to provide a mechanism to inform the membership and the public of jurisdiction-specific requirements for educator licensure in each member jurisdiction.

#### ARTICLE II, ASSUMPTIONS.

- (1) Education is a regulated profession.
- (2) Each member jurisdiction has the authority to establish professional and ethical standards for preparation, licensure and continuing development of educators.
- (3) Each member jurisdiction has the responsibility to adhere to federal requirements and guidelines regarding the qualification of educators.
- (4) Understanding licensure requirements of the different member jurisdictions facilitates professional educator mobility.
- (5) The term “reciprocity” is often inappropriately applied to educator mobility between member jurisdictions.
- (6) As licensure criteria differ from member jurisdiction to member jurisdiction, an educator’s license from one (1) member jurisdiction is not automatically “exchanged” for a license in another member jurisdiction.
- (7) Minimum essential components of an approved educator preparation program are completion of a: (a) Bachelor’s degree, either prior to admission to the program or as part of the program; (b) Supervised clinical practice; and  
(c) Planned program of study.

A member jurisdiction may impose additional components to meet its own standards.

(8) Recognition of national certification of educators, for example, the national board for professional teaching standards, is at the discretion of member jurisdictions.

(9) The terms defined in this interstate agreement provide a common vocabulary, which member jurisdictions agree to use in disseminating information nationally and internationally.

(10) The interstate agreement is not intended to alter, amend or regulate individual member jurisdiction licensure requirements.

### ARTICLE III, DEFINITIONS.

For purposes of this interstate agreement, the following terms are defined as: (1) “Accredited institution” means a college or university which awards a baccalaureate or higher degree and, if located within the United States, is fully accredited by one (1) of the following regional accrediting bodies: (a) Middle states association of colleges and schools; (b) New England association of schools and colleges; (c) North central association of colleges and schools; (d) Northwest commission on colleges and universities; (e) Southern association of colleges and schools; and (f) Western association of schools and colleges.

If the college or university does not have regional accreditation as detailed above, consideration of the educator for licensure is at the discretion of the member jurisdiction.

(2) “Administrator” means an educator whose primary duties may include: (a) The supervision of programs or curriculum; or

(b) Supervision or management of a local educational agency, a school building, a school program or a school system.

(3) “Approved program” means a planned program of study leading to licensure in the appropriate member jurisdiction. Approved programs may be either traditional or nontraditional. A nontraditional program is a post-baccalaureate program in which the candidate may be employed as an educator prior to completion of the program, as defined by the United States department of education (USDOE).

Teacher	Traditional Program	Nontraditional Program
Rigorous Standards	Admission Yes	Yes, including a bachelor's degree earned prior to admission
Conferred Degree Upon Program Completion	Yes or No	Yes or No
Delivered by an Institution of Higher Education (IHE)	Yes	Yes or No
Supervised Clinical Practice	Yes	Yes, but may differ from a traditional program
May Be Employed As An Educator While Completing Program	No	Yes

Administrator	Traditional Program	Nontraditional Program
Rigorous Standards	Admission Yes, including a bachelor's degree or higher earned prior to admission	Yes, including a bachelor's degree or higher earned prior to admission
Conferred Degree Upon Program Completion	Yes or No	Yes or No
Delivered by an IHE	Yes	Yes or No
Supervised Clinical Practice	Yes	Yes, but may differ from a traditional program
May Be Employed As An Educator While Completing Program	Yes or No	Yes

A program approved in one (1) member jurisdiction may not lead to licensure in another member jurisdiction.



(4) “Educator” is categorized as a teacher, administrator or support professional who may be required by the member jurisdiction to hold a license. A member jurisdiction may recognize additional categories of licensure (e.g., career and technical educators) not addressed by this interstate agreement.

(5) “Experience” means employment and licensure as required by the member jurisdiction.

(6) “Jurisdiction-specific requirement” (JSR) means any criterion beyond the minimum essential components required by a member jurisdiction for licensure. The following is a noninclusive list of JSRs: (a) Grade-point average;

(b) Testing or other forms of assessment;

(c) Mentoring;

(d) Supervised and evaluated pre-service or professional experience; (e) Course delivery methodology;

(f) Program approval comparability;

(g) Specific coursework;

(h) Valid license, as defined by the receiving member jurisdiction; (i) Post-baccalaureate coursework or degrees;

(j) Continuing professional development;

(k) Moral fitness or character; or

(l) Citizenship.

(7) “Stages of administrator license” are described below and are general categories of licensure. Member jurisdictions may or may not offer these stages of licensure or require licensure to be eligible for certain school administrator work assignments.

(a) “Stage 1 administrator license” means a license issued to an individual who holds a minimum of a bachelor’s degree, has met approved school administrator preparation program admission requirements, but has not met the jurisdiction-specific requirements of the issuing member jurisdiction.

(b) “Stage 2 administrator license” means a license issued to an individual who has completed an approved school administrator preparation program, but has not met the jurisdiction-specific requirements for a stage 3 license of the issuing member jurisdiction.

(c) “Stage 3 administrator license” means a license issued to an individual who holds a minimum of a master’s degree and has met all jurisdiction-specific requirements for licensure, including endorsements when applicable.

(8) “Stages of teacher licensure” are described below and are general categories of licensure. Member jurisdictions may or may not have licenses available in each stage.

(a) “Stage 1 teacher license” means a license issued to an individual who holds a minimum of a bachelor’s degree, has met approved teacher preparation program admission requirements, but has not met the jurisdiction-specific requirements of the issuing member jurisdiction.

(b) “Stage 2 teacher license” means a license issued to an individual who holds a minimum of a bachelor’s degree, has completed an approved teacher preparation program, but has not met the jurisdiction-specific requirements for a stage 3 license of the issuing member jurisdiction.

(c) “Stage 3 teacher license” means a license issued to an individual who holds a minimum of a bachelor’s degree, has completed an approved teacher preparation program and has met all jurisdiction-specific requirements of the issuing member jurisdiction.

(d) “Stage 4 teacher license” means a license issued to an individual who holds a minimum of a master’s degree or the equivalent, has completed an approved teacher preparation program and has met any jurisdiction-specific requirements beyond those required for the stage 3 license of the issuing member jurisdiction.

(9) “License” means certificate, credential or other similar term designated by the member jurisdiction.

(10) “Member jurisdiction” means an entity which is a voting member of NASDTEC.

(11) “School” means an institution, other than a home school, which offers instruction for students of any grade, from birth through grade 12, which satisfies the compulsory attendance requirements of the member jurisdiction in which the institution is located.

(12) “Support professional” means a person other than a teacher or administrator who is required to hold an educator license based upon at least a bachelor’s degree.

(13) “Teacher” means a person whose primary responsibility is to instruct students or as otherwise defined by the member jurisdiction.

#### ARTICLE IV, DUTIES OF MEMBER JURISDICTIONS.

In signing this interstate agreement, member jurisdictions agree to: (1) Adopt and enforce quality standards for approved programs; (2) Maintain and publish a current listing of programs approved within the member jurisdiction; (3) Apply jurisdiction-specific requirements equitably to applicants completing approved programs in any other member jurisdiction; (4) Agree in principle to the “Assumptions” set forth in this interstate agreement; (5) Agree in principle to the “Minimum Essential Components”; (6) In addition to signing the NASDTEC “Interstate Agreement for Educator Licensure,” each member jurisdiction signs the NASDTEC “Educator Information Clearinghouse Agreement” agreeing to notify the NASDTEC “Educator Information Clearinghouse” immediately upon denial, suspension, revocation or surrender of an educator’s license for reasons other than failing to meet academic requirements.

#### ARTICLE V, PROCEDURE FOR MEMBER PARTICIPATION.

(1) Each member jurisdiction shall complete a jurisdiction-specific requirement (JSR) index for each educator category in the form and time frame as directed by the NASDTEC executive director.

(2) Each member jurisdiction shall revise the jurisdiction-specific requirement (JSR) index immediately in the event that its licensure criteria are amended or modified.

(3) The NASDTEC executive director shall compile a master index reflecting all member jurisdiction’s jurisdiction-specific requirements for distribution and for posting on the NASDTEC website.

## ARTICLE VI, DURATION OF THE INTERSTATE AGREEMENT.

(1) This interstate agreement shall have duration until September 30 of each year ending in a five (5) or a zero (0), unless terminated as provided below. The interstate agreement shall be automatically renewed in the then-current format for each subsequent five (5) year period unless written notice of intent not to renew is given to the executive director of NASDTEC by July 1 of the final year of an interstate agreement period.

(2) A member jurisdiction may withdraw from the interstate agreement upon one (1) year's written notice to the executive director of NASDTEC, who shall in turn notify all other affected member jurisdictions. It shall be incumbent upon the executive director to notify other member jurisdictions.

## ARTICLE VII, MISCELLANEOUS TERMS.

(1) The NASDTEC executive board, by and through the chair of the NASDTEC interstate agreement committee, shall be responsible for administration and interpretation of this interstate agreement.

(2) NASDTEC recognizes the fluidity of educator preparation and licensure laws, regulations and policies in member jurisdictions. It is NASDTEC's intent to maintain the jurisdiction-specific requirements (JSRs) index as a current and accurate reflection of each member jurisdiction's requirements. However, circumstances beyond the control of NASDTEC may, on occasion, inhibit the accuracy of the master index. Accordingly, it is recommended that users of the JSR index refer to member jurisdictions' websites to confirm specific requirements. Further, it is understood that this interstate agreement and the JSR index are provided to facilitate the exchange of information and are not intended to supplant or supersede individual jurisdiction's authority.

## ARTICLE VIII, MEMBER JURISDICTION-SPECIFIC LICENSURE REQUIREMENTS.

Driven by the "Assumptions" identified in Article II of this document, as of October 2010, NASDTEC member jurisdictions recognize the complex nature of the interstate agreement and the public's need for clear, accurate information when moving from one (1) member jurisdiction to another. Member jurisdictions agree to make "Levels of Licensure" and jurisdiction-specific requirements (JSRs) clear to each other and the public by

completing and maintaining the JSR index. This index is intended to provide information to anyone seeking educator licensure in a member jurisdiction, whether prepared through a traditional or nontraditional pathway. It identifies specific requirements beyond the NASDTEC-identified “Minimum Essential Components” for educator preparation. A member jurisdiction’s laws and regulations in place at the time of application for licensure supersede information provided here.

**History.**

1969, ch. 194, § 1, p. 565; am. 2012, ch. 37, § 1, p. 108.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 37, rewrote the section to the extent that a detailed comparison is impracticable.

**Compiler’s Notes.**

The abbreviations and words in parentheses so appeared in the law as enacted.

For additional information of the national association of teacher education and certification, referred to in this section, see *<https://www.nasdtec.net>*.

As of July 29, 2019, all states, except New Mexico, New York, and South Dakota, had adopted this interstate agreement.

**33-4105. “Designated state official.”** — The “designated state official” shall be the superintendent of public instruction. The superintendent of public instruction shall enter into contracts pursuant to Article III of the agreement only with the approval of the state board of education.

**History.**

1969, ch. 194, § 2, p. 565.

**STATUTORY NOTES**

**Cross References.**

Superintendent of public instruction, § 67-1501 et seq.

**33-4106. Contracts kept on file — Published.** — True copies of all contracts made on behalf of the state of Idaho pursuant to the agreement shall be kept on file with the state board of education. The state board of education shall publish all such contracts in convenient form.

**History.**

1969, ch. 194, § 3, p. 565; am. 1991, ch. 30, § 5, p. 58.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 16 of S.L. 1991, ch. 30 read: "Disposition of Records. (a) Whenever this act has struck a requirement for filing a type of document with the secretary of state which was duplicated by filing with another state agency, the secretary of state may destroy those documents in his files."

"(b) Whenever this act has struck a requirement for filing a type of document with the secretary of state which was not duplicated by filing with another state agency, the secretary of state may transfer those documents to the state historical library if it is determined that they have historical significance, and otherwise may destroy them."

"(c) Whenever this act has transferred the place of filing for a type of document from the secretary of state to another agency, the secretary of state and the head of the other agency may thereafter agree to transfer those documents filed before the effective date of this act to the agency which has acquired filing responsibility."

**Effective Dates.**

Section 4 of S.L. 1969, ch. 194 declared an emergency. Approved March 21, 1969.





**CHAPTER 42**  
**NORTH IDAHO COLLEGE**

Section.

33-4201. North Idaho College.

**33-4201. North Idaho College.** — That the educational institution located in Coeur d’Alene, Idaho, heretofore known as North Idaho Junior College, shall be known after the effective date of this act as North Idaho College; and wherever the name North Idaho Junior College shall appear in any statute, such statute hereby is amended to read North Idaho College as fully and completely as though the said name on said statute was specifically amended herein, and all such statutes shall be construed to refer to and mean North Idaho College.

**History.**

1971, ch. 68, § 1, p. 154.

**STATUTORY NOTES**

**Compiler’s Notes.**

The phrase “the effective date of this act” refers to the effective date of S.L. 1971, Chapter 68, which was effective July 31, 1971.



## **CHAPTER 43**

### **SCHOLARSHIPS**

#### **Section.**

33-4301. Short title.

33-4302. Armed forces and public safety officer scholarships.

33-4302A. Public safety officer scholarships — State aid. [Repealed.]

33-4303. Idaho opportunity scholarship.

33-4304. Scholarship program reporting requirements.

33-4305. Purposes. [Repealed.]

33-4306. Definitions. [Repealed.]

33-4307. Eligibility — Maximum amounts — Conditions. [Repealed.]

33-4308. Maximum number of grants. [Repealed.]

33-4309. Remittance in case of discontinued attendance. [Repealed.]

33-4310. Discrimination prohibited. [Repealed.]

33-4311. Certifications of enrollment and termination of attendance of grant recipients. [Repealed.]

33-4312. State board of education and board of regents of University of Idaho as administrative agency. [Repealed.]

33-4313. Duties of board. [Repealed.]

33-4314. Appointment of administrator and staff. [Repealed.]

33-4315. No control of nonpublic institutions which accept grant recipients. [Repealed.]

**33-4301. Short title.** — This act may be cited as “The Scholarships and State Aid Act.”

**History.**

1972, ch. 393, § 1, p. 1136; am. 2013, ch. 72, § 2, p. 183.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 72, substituted “Scholarships and State Aid Act” for “POW/MIA Scholarship Act of 1972.”

**Compiler’s Notes.**

The term “this act” refers to S.L. 1972, Chapter 393, which is compiled as §§ 33-4301 and 33-4302.

**Effective Dates.**

Section 11 of S.L. 2013, ch. 72 provided: “Sections 5, 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2 [this section], 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013.”

**33-4302. Armed forces and public safety officer scholarships. — (1)**

The following individuals shall be eligible for the scholarship program provided for herein:

(a) Any spouse or child of any Idaho citizen who, while such person is or was a resident of the state of Idaho, has been determined by the federal government to be a prisoner of war or missing in action; or to have died of, or become totally and permanently disabled by, injuries or wounds sustained in action in any area of armed conflict in which the United States is a party; and

(b) Any spouse or child of any member of the armed forces of the United States who is stationed in the state of Idaho on military orders and who is deployed from the state of Idaho to any area of armed conflict in which the United States is a party and who has been determined by the federal government to be a prisoner of war or missing in action; or to have died of, or become totally and permanently disabled by, injuries or wounds sustained in action as a result of such deployment.

(c) Any spouse or child of a full-time or part-time public safety officer, as defined in paragraph (d) of this subsection, employed by or volunteering for the state of Idaho or for a political subdivision of the state of Idaho, which public safety officer is or was a resident of the state of Idaho at the time such officer was killed or totally and permanently disabled in the line of duty. The death or disability shall have occurred on or after January 1, 1975. The scholarship provided for in this section shall not be available unless it is determined that:

(i) The death or disablement of the public safety officer occurred in the performance of the officer's duties;

(ii) The death or disablement was not caused by the intentional misconduct of the public safety officer or by such officer's intentional infliction of injury; and

(iii) The public safety officer was not voluntarily intoxicated at the time of death.

(d) For purposes of this section, the following terms have the following meanings:

(i) “Public safety officer” means a peace officer or firefighter, a paramedic or emergency medical technician as those terms are defined in [section 56-1012, Idaho Code](#).

(ii) “Volunteering” means contributing services as a bona fide member of a legally organized law enforcement agency, fire department or licensed emergency medical service provider organization.

(2)(a) To be eligible for the scholarship provided for herein, a child of a military member or a public safety officer must be a resident of the state of Idaho and must have completed secondary school or its equivalent in the state of Idaho. A child already born, or born after a military member or public safety officer is determined to be imprisoned or missing in action, or is killed or becomes totally and permanently disabled, shall be eligible for this scholarship;

(b) To be eligible for the scholarship provided for herein, the spouse of a military member or public safety officer must be a resident of the state of Idaho and must have been married to such person at the time the military member or public safety officer was determined to be imprisoned or missing in action, or was killed or became totally and permanently disabled. Provided however, that in the situation of disability, the spouse must be currently married to such person.

(3) An eligible individual who applies for the scholarship provided for herein shall, after verification of eligibility, receive the scholarship and be admitted to attend undergraduate studies at any public institution of higher education or public professional-technical college within the state of Idaho without the necessity of paying tuition and fees therefor; such student shall be provided with books, equipment and supplies necessary for pursuit of such program of enrollment not to exceed five hundred dollars (\$500) per quarter, semester, intensified semester, or like educational period; such student shall be furnished on-campus institution housing and subsistence for each month he or she is enrolled full-time under this program and actually resides in such on-campus facility; provided however, that such undergraduate educational benefits shall not exceed a total of thirty-six (36) months or four (4) nine (9) month periods. Provided further, that the

initiation of such educational benefits shall extend for a period of ten (10) years after achieving a high school diploma or its equivalency, or for a period of ten (10) years after the event giving rise to the eligibility for the scholarship, whichever is longer.

(4) The eligible individual shall meet such other educational qualifications as such institution of higher education or professional-technical college has established for other prospective students of this state, as well as any additional educational qualifications established by the state board of education and board of regents of the university of Idaho.

(5) Application for eligibility under this section shall be made to the state board of education and the board of regents of the university of Idaho or the state board of vocational-technical education. The board shall verify the eligibility of the applicant and communicate such eligibility to such person and the affected institution or college.

(6) Affected institutions shall in their preparation of future budgets include therein costs resultant from such tuition, fee, book, equipment, supply, housing and subsistence loss for reimbursement thereof from appropriations of state funds.

(7) For the purposes of this section, a member of the armed forces of the United States is considered totally and permanently disabled if at the time of application a current disability determination made by the United States social security administration is in effect with respect to such individual.

(8) For the purposes of this section, a public safety officer is considered totally and permanently disabled if at the time of application a current disability determination made by the public employee retirement system of Idaho is in effect with respect to such individual.

(9) The state board of education and board of regents of the university of Idaho may adopt rules to implement and administer the scholarship program provided for in this section.

### **History.**

1972, ch. 393, § 2, p. 1136; am. 1991, ch. 90, § 1, p. 204; am. 1999, ch. 329, § 36, p. 852; am. 2002, ch. 276, § 1, p. 809; am. 2005, ch. 326, § 1, p. 1017; am. 2007, ch. 95, § 1, p. 277; am. 2008, ch. 185, § 1, p. 557; am.



2012, ch. 178, § 1, p. 467; am. 2013, ch. 72, § 3, p. 183; am. 2016, ch. 32, § 1, p. 77.

## **STATUTORY NOTES**

### **Cross References.**

Public employee retirement system, § 59-1301 et seq.

### **Amendments.**

The 2007 amendment, by ch. 95, added the introductory language in subsection (1); added the subsection (1)(a) designation and subsection (1)(b); designated the last paragraph of subsection (1) as subsection (2), and therein added “An eligible individual who applies for the scholarship provided for herein shall, after verification of eligibility, receive the scholarship and,” and inserted “the initiation of” in the last sentence; and redesignated former subsections (2) through (5) as (3) through (6).

The 2008 amendment, by ch. 185, in paragraphs (1)(a) and (1)(b), inserted “or become disabled by”; and added the second paragraph in subsection (5).

The 2012 amendment, by ch. 178, rewrote this section, adding subsections (2) and (8), deleting former subsection (6), relating to duties of the applicants for the scholarship program, and renumbering the other subsections accordingly.

The 2013 amendment, by ch. 72, substituted the present section heading for “Scholarships — State aid”; inserted paragraphs (1)(c) and (1)(d); and inserted “or public safety officer” three times in subsection (2).

The 2016 amendment, by ch. 32, substituted “paragraph (d) of this subsection” for “subsection (d) of this section” in the first sentence of the introductory paragraph in paragraph (1)(c); substituted “shall be furnished on-campus institution housing” for “shall be furnished on-campus housing” in the first sentence of subsection (3); added present subsection (8) and redesignated former subsection (8) as subsection (9).

### **Effective Dates.**

Section 3 of S.L. 1972, ch. 393 provided the act should take effect on and after June 1, 1972.

Section 11 of S.L. 2013, ch. 72 provided: “Sections 5, 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3 [this section], 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013.”

### **33-4302A. Public safety officer scholarships — State aid. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 4, effective July 1, 2013.

#### **History.**

I.C., § 33-4302A, as added by 1993, ch. 346, § 1, p. 1288; am. 1994, ch. 417, § 1, p. 1307; am. 1999, ch. 329, § 37, p. 852; am. 1999, ch. 369, § 1, p. 975; am. 2002, ch. 283, § 1, p. 825; am. 2012, ch. 178, § 2, p. 467.

**33-4303. Idaho opportunity scholarship.** — (1) The purposes of this section are to:

- (a) Recognize that all Idaho citizens benefit from an educated citizenry;
- (b) Increase individual economic vitality and improve the overall quality of life for many of Idaho's citizens;
- (c) Provide access to eligible Idaho postsecondary education through funding to remove financial barriers;
- (d) Increase the opportunity for economically disadvantaged Idaho students; and
- (e) Incentivize students to complete a postsecondary education degree or certificate.

(2) For the purposes of this section, the following definitions shall apply:

(a) “Educational costs” means the dollar amount determined annually by the state board of education as necessary for student tuition, fees, books and such other expenses reasonably related to attendance at an eligible Idaho postsecondary educational institution.

(b) “Eligible Idaho postsecondary educational institution” means a public postsecondary organization governed or supervised by the state board, the board of regents of the university of Idaho, a board of trustees of a community college established pursuant to the provisions of chapter 21, title 33, Idaho Code, or the state board for career technical education or any educational organization located in Idaho that is:

- (i) Operated privately;
  - (ii) Classified as not-for-profit under state law;
  - (iii) Under the control of an independent board and not directly controlled or administered by a public or political subdivision; and
  - (iv) Accredited by an organization recognized by the state board as provided in [section 33-2402, Idaho Code](#).
- (c) “Eligible student” means a student who:

- (i) Is an Idaho resident as defined in [section 33-3717B, Idaho Code](#);
- (ii) Has graduated or will graduate from an accredited high school or its equivalent in Idaho as determined by the state board;
- (iii) Has enrolled or applied to an eligible Idaho postsecondary educational institution;
- (iv) Is a postsecondary undergraduate student who has not previously completed a baccalaureate (bachelor's) degree or higher; and
- (v) Meets need and merit criteria as set by the state board.

“Eligible student” also means a student who has met the eligibility requirements and was awarded an opportunity scholarship prior to June 30, 2014. Continued eligibility shall be based upon the eligibility requirements at the time of the original award.

(d) “Opportunity scholarship program” means the scholarship program described in this section and in the rules established by the state board.

(e) “Shared model of responsibility” means a model set by the board to determine the required and expected contributions of the student, the student’s family and available federal financial aid.

(f) “State board” means the state board of education.

(3) The state board shall promulgate rules to determine student eligibility, academic and financial eligibility, a process for eligible students to apply, amount of awards, how eligible students will be selected and when the awards shall be made, as well as other rules necessary for the administration of this section.

(4) An eligible student must:

(a) Apply or have applied for federal student financial assistance available to an eligible student who will attend or is enrolled in an eligible Idaho postsecondary educational institution; and

(b) Meet need and merit criteria established by the state board in rule.

(5) Funds that are available for the opportunity scholarship program shall be used to provide scholarships based upon a shared model of responsibility between the scholarship recipient and the recipient’s family, the federal

government and the participating eligible Idaho postsecondary educational institution that the recipient attends for covering the educational costs.

(6) Up to twenty percent (20%) of funds that are available for the opportunity scholarship program may be used for awards to adult students who have earned at least twenty-four (24) credits toward a postsecondary degree or certificate and who return to an eligible Idaho postsecondary educational institution to complete a certificate or degree.

(7) The opportunity scholarship award shall not exceed the actual educational costs at the eligible Idaho postsecondary educational institution that the student attends. The amount of scholarship shall not exceed the educational costs established by the state board.

(8) Award payments shall be made annually to an eligible Idaho postsecondary educational institution. In no instance may the entire amount of an award be paid to or on behalf of such student in advance.

(9) If an eligible student becomes ineligible for a scholarship under the provisions of this chapter, or if a student discontinues attendance before the end of any semester, quarter, term or equivalent covered by the award after receiving payment under this chapter, the eligible Idaho postsecondary educational institution shall remit, up to the amount of any payments made under this program, any prorated tuition or fee balances to the state board.

(10) There is hereby created an account in the state treasury to be designated the opportunity scholarship program account.

(a) The account shall consist of moneys appropriated to the account by the legislature, moneys contributed to the account from other sources and the earnings on such moneys. The executive director of the state board may receive on behalf of the state board any moneys or real or personal property donated, bequeathed, devised or conditionally granted to the state board for purposes of providing funding for such account. Moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in the account.

(b) Earnings from moneys in the account or specified gifts shall be distributed annually to the state board to implement the opportunity scholarship program as provided for under the provisions of this chapter.

(c) All moneys placed in the account and earnings thereon are hereby perpetually appropriated to the state board for the purpose described in paragraph (b) of this subsection. All expenditures from the account shall be paid out in warrants drawn by the state controller upon presentation of the proper vouchers. Up to fifty thousand dollars (\$50,000) of the annual earnings distribution to the state board may be used by the state board annually for administrative costs related to the implementation of the provisions of this chapter.

(d) Allowable administrative costs include, but are not limited to, operating expenses for the implementation and maintenance of a database, operating expenses to administer the program, personnel costs necessary to administer the program and costs related to promoting awareness of the program.

(e) Any unused annual funds shall be deposited into the opportunity scholarship program account.

(f) Pending use, surplus moneys in the account shall be invested by the state treasurer or endowment fund investment board in the same manner as provided under section 67-1210 or 68-501, Idaho Code, as applicable. Interest earned on the investments shall be returned to the account.

(11) The effectiveness of the Idaho opportunity scholarship will be evaluated by the state board on a regular basis. This evaluation will include annual data collection as well as longer-term evaluations.

### **History.**

I.C., § 33-4303, as added by 2013, ch. 72, § 6, p. 183; am. 2016, ch. 25, § 26, p. 35; am. 2016, ch. 32, § 2, p. 77; am. 2018, ch. 245, § 1, p. 570.

## **STATUTORY NOTES**

### **Cross References.**

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

### **Prior Laws.**

Former § 33-4303, Short title, which comprised 1974, ch. 87, § 1, p. 1178; am. 2000, ch. 206, § 1, p. 515; am. 2003, ch. 214, § 1, p. 561, was repealed by S.L. 2013, ch. 74, § 5, effective July 1, 2014.

### **Amendments.**

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 25, substituted “state board for career technical education” for “state board for professional-technical education” near the end of the introductory paragraph of paragraph (2)(b).

The 2016 amendment, by ch. 32, inserted “or endowment fund investment board” and substituted “section 67-1210 or 68-501, Idaho Code, as applicable” for “[section 67-1210, Idaho Code](#)” in paragraph (9)(f).

The 2018 amendment, by ch. 245, inserted present subsection (6) and redesignated the subsequent subsections accordingly.

### **Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 11 of S.L. 2013, ch. 72 provided: “Sections 5, 6 [this section], 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 and 10 of this act shall be in full force and effect on and after July 1, 2013.”



**33-4304. Scholarship program reporting requirements.** — All eligible institutions participating in the scholarships and state aid programs shall report student level data on the effectiveness of the program. The data reported shall be established by the state board of education.

**History.**

I.C., § 33-4304, as added by 2013, ch. 72, § 7, p. 183.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-4304, Public policy, which comprised 1974, ch. 87, § 2, p. 1178; am. 2007, ch. 343, § 1, p. 1014, was repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

**Compiler's Notes.**

This section was enacted by S.L. 2013, Chapter 72 as § 33-4304, but was redesignated, through the use of brackets, as § 33-4303A to place it adjacent to § 33-4303, also enacted by S.L. 2013, Chapter 72. With the repeal of § 33-4304, as enacted by S.L. 1974, ch. 87, § 2, this section has reverted to its original, enacted numbering.

**Effective Dates.**

Section 11 of S.L. 2013, ch. 72 provided: “Sections 5, 6, 8 and 9 of this act shall be in full force and effect on and after July 1, 2014. Sections 1, 2, 3, 4, 7 [this section] and 10 of this act shall be in full force and effect on and after July 1, 2013.”

### **33-4305. Purposes. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

#### **History.**

1974, ch. 87, § 3, p. 1178; am. 1999, ch. 329, § 19, p. 85; am. 2000, ch. 206, § 2, p. 515.

### **33-4306. Definitions. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

#### **History.**

1974, ch. 87, § 4, p. 1178; am. 1979, ch. 72, § 1, p. 178; am. 1999, ch. 329, § 20, p. 852; am. 2000, ch. 206, § 3, p. 515; am. 2002, ch. 117, § 1, p. 331; am. 2005, ch. 210, § 7, p. 626; am. 2007, ch. 343, § 2, p. 1014.

**33-4307. Eligibility — Maximum amounts — Conditions. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

**History.**

1974, ch. 87, § 5, p. 1178; am. 1979, ch. 72, § 2, p. 178; am. 1990, ch. 403, § 1, p. 1128; am. 1993, ch. 346, § 2, p. 1288; am. 2000, ch. 206, § 4, p. 515; am. 2004, ch. 355, § 1, p. 1060; am. 2007, ch. 343, § 3, p. 1014.

**33-4308. Maximum number of grants. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

**History.**

1974, ch. 87, § 6, p. 1178; am. 2000, ch. 206, § 5, p. 515.

**33-4309. Remittance in case of discontinued attendance. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

**History.**

1974, ch. 87, § 7, p. 1178; am. 2000, ch. 206, § 6, p. 515.

**33-4310. Discrimination prohibited. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

**History.**

1974, ch. 87, § 8, p. 1178; am. 1979, ch. 72, § 3, p. 178.

**33-4311. Certifications of enrollment and termination of attendance of grant recipients. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

**History.**

1974, ch. 87, § 9, p. 1178.



**33-4312. State board of education and board of regents of University of Idaho as administrative agency. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

**History.**

1974, ch. 87, § 10, p. 1178.

**33-4313. Duties of board. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

**History.**

1974, ch. 87, § 11, p. 1178; am. 2000, ch. 206, § 7, p. 515.

**33-4314. Appointment of administrator and staff. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

**History.**

1974, ch. 87, § 12, p. 1178.

**33-4315. No control of nonpublic institutions which accept grant recipients. [Repealed.]**

Repealed by S.L. 2013, ch. 72, § 5, effective July 1, 2014.

**History.**

1974, ch. 87, § 13, p. 1178.



## **CHAPTER 44**

### **IDAHO WORK STUDY PROGRAM**

#### **Section.**

33-4401. Idaho work study program established.

33-4402. Public policy — Administrative agency.

33-4403. Definitions.

33-4404. Program purpose.

33-4405. Program requirements.

33-4406. Limitations.

33-4407. Eligible types of employment.

33-4408. Payment provisions.

33-4409. Record keeping requirements.

**33-4401. Idaho work study program established.** — There is hereby established for the state of Idaho the Idaho work study program.

**History.**

I.C., § 33-4401, as added by 1989, ch. 124, § 1, p. 273.

**OPINIONS OF ATTORNEY GENERAL**

**Constitutionality.**

The Idaho College Work Study Program established under this chapter, as applied to postsecondary institutions controlled by a church, sectarian or religious denomination, violates Idaho Const, Art. IX, § 5. OAG 89-5 (but see 1990 amendment of chapter).

The Idaho Work Study Program does not violate the United States Constitution, as the purpose of the work study program, to expand employment opportunities for resident students, is secular, and the primary effect of the legislation does not advance religion. Although the aid would be funneled through the colleges, their involvement would largely consist of fund disbursement and recordkeeping, which would not result in excessive entanglement. OAG 89-5 (see 1990 amendment of chapter).

**33-4402. Public policy — Administrative agency.** — The legislature hereby recognizes and declares that it is in the public interest to assure educational opportunity to Idaho postsecondary students. The Idaho work study program is an employment program designed to allow resident students with financial need to earn funds to assist in attending accredited institutions of higher education in Idaho or resident students with educational need to obtain work experience related to the student's course of academic study, pursuant to this chapter.

The state board of education is hereby designated as the administrative agency for the work study program. The board shall allocate funds appropriated to the program to eligible institutions based upon fall full-time equivalent enrollment in a manner established by board rule.

**History.**

I.C., § 33-4402, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 1, p. 198.

**OPINIONS OF ATTORNEY GENERAL**

**Constitutionality.**

The Idaho College Work Study Program established under this chapter, as applied to postsecondary institutions controlled by a church, sectarian or religious denomination, violates Idaho Const., Art. IX, § 5. OAG 89-5 (but see 1990 amendment of chapter).

The Idaho Work Study Program does not violate the United States Constitution, as the purpose of the work study program, to expand employment opportunities for resident students, is secular, and the primary effect of the legislation does not advance religion. Although the aid would be funneled through the colleges, their involvement would largely consist of fund disbursement and recordkeeping, which would not result in excessive entanglement. OAG 89-5 (see 1990 amendment of chapter).



**33-4403. Definitions.** — As used in this chapter:

(1) “Accredited institution of higher education” means any public or private university, college, or community college in Idaho accredited by the northwest association of schools and colleges, or any public professional-technical school operated by the state of Idaho or any political subdivision thereof; provided, that no institution of higher education shall be eligible to participate in the program unless it agrees to and complies with program rules adopted by the board pursuant to chapter 52, title 67, Idaho Code; provided, further, that private accredited institutions of higher education which are controlled by sectarian organizations, and students attending such institutions, may participate only in the educational need, off-campus work experience portion of this program and such off-campus employment may not be located at, or be performed on behalf of, a sectarian or religious establishment.

(2) “Board” means the state board of education.

(3) “Program” means the Idaho work study program established pursuant to this chapter.

(4) “Resident student” means an individual as defined in [section 33-3717B, Idaho Code](#).

(5) “Student” means an individual currently at an Idaho school enrolled in a postsecondary degree program, or a state supported professional-technical program.

(6) “Student with educational need” means a post-high school student in good standing at an accredited institution of higher learning who is desirous of obtaining work experience related to the student’s course of academic study, in either on-campus or approved off-campus employment, and who meets the institutional requirements for determining educational need; provided, however, a student whose academic course of study is sectarian in nature or who is pursuing an educational program leading to a baccalaureate degree in theology or divinity may not participate in this program.

(7) “Student with financial need” means a post-high school student in good standing at an accredited institution of higher learning who

demonstrates to the institution the financial inability, either through the student's parents, family and/or personally, to meet the institutionally defined cost of education, and further demonstrates the ability and willingness to work in a student work study program, according to the stated needs of the institution.

### **History.**

I.C., § 33-4403, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 2, p. 198; am. 1999, ch. 329, § 38, p. 852; am. 2005, ch. 210, § 8, p. 626.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The northwest association of schools and colleges, referred to in subsection (1), is now the northwest commission on colleges and universities. See <https://www.nwccu.org>.

## **OPINIONS OF ATTORNEY GENERAL**

### **Constitutionality.**

The Idaho College Work Study Program established under this chapter, as applied to postsecondary institutions controlled by a church, sectarian or religious denomination, violates Idaho Const., Art. IX, § 5. OAG 89-5 (see 1990 amendment of chapter).

The Idaho Work Study Program does not violate the United States Constitution, as the purpose of the work study program, to expand employment opportunities for resident students, is secular, and the primary effect of the legislation does not advance religion. Although the aid would be funneled through the colleges, their involvement would largely consist of fund disbursement and recordkeeping, which would not result in excessive entanglement. OAG 89-5 (see 1990 amendment of chapter).

**33-4404. Program purpose.** — The purpose of the program is to expand employment opportunities for resident students. Employment may be in jobs at accredited institutions of higher education or in approved off-campus jobs. Students with financial need or educational need are to benefit through the program, and to do so while gaining work experience. Accordingly, efforts should be made whenever possible to provide job opportunities to students which relate to their academic and career goals.

Funds under this program may be used to pay up to eighty percent (80%) of earnings in on-campus jobs. Program funds may also be used to pay up to fifty percent (50%) of earnings for approved off-campus jobs where the jobs are directly related to the student's course of academic study and the employer pays fifty percent (50%) of the earnings. Program funds may also be used to fund up to ten percent (10%) of the total match required for the federal college work study program. Idaho program funds used as match will be governed by federal college work study policy. However, institutional funds used for federal matching purposes shall not be less than the amount allocated for the prior year.

### **History.**

I.C., § 33-4404, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 3, p. 198.

## **OPINIONS OF ATTORNEY GENERAL**

### **Constitutionality.**

The Idaho College Work Study Program established under this chapter, as applied to postsecondary institutions controlled by a church, sectarian or religious denomination, violates Idaho **Const., Art. IX, § 5**. OAG 89-5 (but see 1990 amendment of chapter).

The Idaho Work Study Program does not violate the United States Constitution, as the purpose of the work study program, to expand employment opportunities for resident students, is secular, and the primary effect of the legislation does not advance religion. Although the aid would be funneled through the colleges, their involvement would largely consist of

fund disbursement and recordkeeping, which would not result in excessive entanglement. OAG 89-5 (see 1990 amendment of chapter).

**33-4405. Program requirements.** — To be eligible for the program, a person must be an Idaho resident student enrolled at an accredited institution of higher education at least half-time, as defined by the eligible institution, and be in good standing and demonstrate academic progress according to the institution's published standards of satisfactory academic progress for financial aid purposes.

The entire allocation for the program must be used to provide employment to students with documented financial need or educational need. Requirements for determination of financial need shall be the same as those for the federal college work study program. However, the financial aid office may adjust the federal financial need definition for unusual circumstances documented by the financial aid office. All application procedures for need-based programs, as defined by the institution, shall be followed.

Requirements for determination of educational need shall be formulated by each participating institution, subject to review by the state board of education; provided, that such requirements shall include a requirement that the work experience be related to the student's course of academic study.

**History.**

I.C., § 33-4405, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 4, p. 198.

**33-4406. Limitations.** — Students shall work no more than twenty (20) hours per week of employment under the program when classes are in session. Students are not to earn more than their award. However, in recognition of administrative realities, overearnings of not more than two hundred dollars (\$200) shall not constitute an overaward. Earnings in excess of two hundred dollars (\$200) over the need or award may not be paid from program funds and must be counted a resource in subsequent periods of enrollment.

**History.**

I.C., § 33-4406, as added by 1989, ch. 124, § 1, p. 273.

**33-4407. Eligible types of employment.** — Students may be employed either on-campus or off-campus at eligible accredited institutions of higher education, subject to the limitations expressed in this chapter. Employing organizations and agencies must be responsible and must have professional supervision. Discrimination by employers on the bases of sex, race, color, age, religion, national origin, marital status or disability is prohibited.

Generally, employment which is allowable under the federal college work study program is also allowable under the Idaho program. This applies to both on-campus and off-campus employment, except that off-campus jobs for the program must be within Idaho. Likewise, employment which is not allowable under federal regulations is not eligible under the Idaho program.

Opinions from federal officials as to the legitimacy of a particular job under the federal college work study program may be assumed to be applicable to the Idaho program. However, approval to use Idaho program funds for particular jobs should not be construed as permission to institutions to use federal work-study funds to employ students in such jobs.

The financial aid office at the institution is responsible for ensuring that disbursements are made only for work performed in accordance with the written job description, with adequate supervision, and with proper documentation for the hours worked.

### **History.**

I.C., § 33-4407, as added by 1989, ch. 124, § 1, p. 273; am. 1990, ch. 95, § 5, p. 198; am. 2010, ch. 235, § 17, p. 542.

## **STATUTORY NOTES**

### **Amendments.**

The 2010 amendment, by ch. 235, substituted “national origin, marital status or disability is prohibited” for “natural origin, marital status, or handicap is prohibited” in the first paragraph.

**33-4408. Payment provisions.** — Students shall be compensated on an hourly basis for actual time on the job at a rate commensurate with the duties and responsibilities of the job. Student employees must be paid at least monthly. Individual checks payable to the student, or similar instruments which may be cashed by students on their own endorsement without further restrictions, are required. With written permission from the student, the institution may credit earnings to the student's account to defray institutional educational costs.

**History.**

I.C., § 33-4408, as added by 1989, ch. 124, § 1, p. 273.



**33-4409. Record keeping requirements.** — The institution office responsible for student referral and placement must maintain written job descriptions which include rates of pay, or ranges of pay, for each position for which program funds are used. The job descriptions shall be reviewed and updated on an annual basis.

Written records shall be maintained for all employment referrals, indicating acknowledgment of the hiring party that the student has been given the position, or reasons why the student was not hired.

Written records showing the time worked must be maintained for all program employees, and must be signed by the student and supervisor, and submitted on at least a monthly basis.

**History.**

I.C., § 33-4409, as added by 1989, ch. 124, § 1, p. 273.

Idaho Code Ch. 45

• [Title 33](#) », « [Ch. 45](#) »

## **CHAPTER 45**

### **SCHOOL ACCOUNTABILITY REPORT CARDS**

Section.

33-4501, 33-4502. [Repealed.]

### **33-4501. School accountability report card. [Repealed.]**

Repealed by S.L. 2017, ch. 59, § 1, effective July 1, 2017. For present related provisions, see § 33-320.

#### **History.**

**I.C., § 33-4501**, as added by 1990, ch. 149, § 1, p. 332; am. 1992, ch. 277, § 1, p. 853; am. 1996, ch. 176, § 1, p. 564.

### **33-4502. School district requirements. [Repealed.]**

Repealed by S.L. 2017, ch. 59, § 1, effective July 1, 2017. For present related provisions, see § 33-320.

#### **History.**

**I.C., § 33-4502**, as added by 1990, ch. 149, § 1, p. 332; am. 1996, ch. 176, § 2, p. 564.



## **CHAPTER 46**

### **ADVANCED OPPORTUNITIES**

Section.

33-4601. Definitions.

33-4601A. Rulemaking authority.

33-4602. Advanced opportunities — Rulemaking.

33-4603. “8 in 6 program.” [Repealed.]

33-4604. Mastery advancement program. [Repealed.]

33-4605. Postsecondary credit scholarship.

**33-4601. Definitions.** — For purposes of this chapter, the following definitions shall apply:

- (1) “Credit” means middle level or high school credit.
- (2) “Dual credit” is as defined in [section 33-5102, Idaho Code](#).
- (3) “Full credit load” means at least twelve (12) credits per school year for grades 7-12.
- (4) “Overload course” means a course taken that is in excess of a full credit load and outside of the regular school day, including summer courses.
- (5) “Parent” means parent or parents or guardian or guardians.
- (6) “Public schools” means an Idaho school district, charter school or Idaho tribal school.
- (7) “School year” means the normal school year that begins upon the conclusion of the spring semester leading up to the break between grades and ends upon the beginning of the same break of the following year.

**History.**

[I.C., § 33-4601](#), as added by 2015, ch. 58, § 4, p. 151; am. 2016, ch. 166, § 1, p. 450; am. 2018, ch. 100, § 1, p. 209.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 166, inserted “level” in subsection (1); rewrote subsection (3), which formerly read: “‘Full course load’ means at least twelve (12) credits per school year for grades 7-12”; substituted “credit load” for “course load” in subsection (4); and inserted “spring semester leading up to the” in subsection (7).

The 2018 amendment, by ch. 100, deleted “or the maximum number of credits offered by the student’s school during the regular school day per school year, whichever is greater” at the end of subsection (3) and inserted “and outside of the regular school day” in subsection (4).



**Compiler's Notes.**

Former § 33-4601, Short title, which comprised **I.C., § 33-4601**, as added by 1991, ch. 60, § 1, p. 137, was repealed by S.L. 2013, ch. 72, § 8, effective July 1, 2014.

**33-4601A. Rulemaking authority.** — The state board of education may promulgate rules to implement the provisions of this chapter.

**History.**

I.C., § 33-4601A, as added by 2016, ch. 374, § 1, p. 1091.

**STATUTORY NOTES**

**Cross References.**

State board of education, § 33-101 et seq.

**Compiler's Notes.**

S.L. 2016, Chapter 374 became law without the signature of the governor.

**33-4602. Advanced opportunities — Rulemaking.** — (1) Students attending public schools in Idaho will be eligible for four thousand one hundred twenty-five dollars (\$4,125) to use toward overload courses, dual credits, postsecondary credit-bearing examinations, career technical certificate examinations, and career technical education workforce training courses. Students may access these funds in grades 7 through 12 for:

(a) Overload courses, the distribution of which may not exceed two hundred twenty-five dollars (\$225) per overload course. A student must take and successfully be completing a full credit load within a given school year to be eligible for funding of an overload course. An overload course must be taken for high school credit to be eligible for funding. To qualify as an eligible overload course for the program, the course must:

(i) Be offered by a provider accredited by the organization that accredits Idaho public schools; and

(ii) Be taught by an individual certified to teach the grade and subject area of the course in Idaho.

(b) Eligible dual credits, the distribution of which may not exceed seventy-five dollars (\$75.00) per one (1) dual credit hour. Dual credit courses must be offered by a regionally accredited postsecondary institution. To qualify as an eligible dual credit course, the course must be a credit-bearing 100 level course or higher.

(c) Eligible postsecondary credit-bearing or career technical certificate examinations. The state department of education shall maintain a list of eligible exams and costs. Eligible examinations include:

(i) Advanced placement (AP);

(ii) International baccalaureate (IB);

(iii) College-level examination program (CLEP); and

(iv) Career technical education examinations that lead to an industry-recognized certificate, license, or degree.

(d) CTE workforce training courses, such as federally registered apprenticeships, the distribution of which may not exceed five hundred dollars (\$500) per course and one thousand dollars (\$1,000) per year. The state department of education shall collaborate with the division of career technical education to maintain a list of eligible training courses and costs. Eligible training courses must:

- (i) Be provided by an Idaho public technical college;
- (ii) Lead to an industry-recognized certificate, license, or degree;
- (iii) Be required training for occupations deemed regionally in demand;
- (iv) Be courses that are not otherwise available at the student's high school; and
- (v) Allow high school-aged students to participate.

(2) A student who has earned fifteen (15) postsecondary credits using the advanced opportunities program and who wishes to earn additional credits must first identify his postsecondary goals. Advisors shall counsel any student who wishes to take dual credit courses that the student should ascertain for himself whether the particular postsecondary institution that he desires to attend will accept the transfer of coursework credits under this section.

(3) These moneys may be used to pay an amount not to exceed the price to the student of such courses and examinations pursuant to the limitations stated in this section. These moneys shall not supplant existing program funds. Payments made under this section shall be made from the moneys appropriated for the educational support program. No later than January 15, the state department of education shall annually report to the education committees of the senate and the house of representatives details regarding the number of students benefiting from assistance with the cost of overload courses, dual credit courses and examinations, the number of credits awarded and amounts paid pursuant to this section during the previous school year.

(4) The board of each public school may set forth criteria by which a student may challenge a course. If a student successfully meets the criteria set forth by the board of the public school, then the student shall be counted

as having completed all required coursework for that course. The public school, with the exception of Idaho tribal schools, shall be funded for such students based upon either actual hours of attendance or the course that the student has successfully passed, whichever is more advantageous to the public school, up to the maximum of one (1) full-time student.

(5) Any student who successfully completes public school grades 1 through 12 curriculum at least one (1) year early shall be eligible for an advanced opportunities scholarship. The scholarship may be used for tuition and fees at any Idaho public postsecondary educational institution. The amount of the scholarship shall equal thirty-five percent (35%) of the statewide average daily attendance-driven funding per enrolled pupil for each year of grades 1 through 12 curriculum avoided by the student's early graduation. Each public school shall receive an amount equal to each such awarded scholarship for each student that graduates early from that public school. Students must apply for the scholarship within two (2) years of graduating from a public school.

(6) The state department of education shall reimburse public schools or public postsecondary educational institutions, as applicable, for such costs, up to the stated limits, within one hundred twenty-five (125) days of receiving the necessary data upon which reimbursements may be paid. The submission method and timelines of reimbursement data shall be determined by the state department of education. Payments will be made only for activity occurring and reported within each fiscal year.

(7) For public funding purposes, average daily attendance shall be counted as normal for students participating in dual credit courses pursuant to this section.

(8) If a student fails to earn credit or successfully complete a course for which the department has paid a reimbursement, the student must pay for and successfully earn credit or complete one (1) like course before the state department of education may pay any further reimbursements for the student. If a student performs inadequately on an examination for which the state department of education has paid a reimbursement, the public school shall determine whether the student must pay for and successfully pass such examination to continue receiving state funding. Repeated and remedial

courses or examinations are not eligible for funding through these programs.

(9) The state department of education shall reimburse community colleges or counties, as applicable, for any out-of-district county tuition pursuant to [section 33-2110A, Idaho Code](#). Such reimbursements shall be in an amount not to exceed fifty dollars (\$50.00) per credit hour and only for dual credit courses taken pursuant to this section.

(10) Public schools shall establish timelines and requirements for participation in the program, including implementing procedures for the appropriate transcription of credits, reporting of program participation and financial transaction requirements. Public schools shall make reasonable efforts to ensure that any student who considers participating in the program also considers the challenges and time necessary to succeed in the program, and schools shall make reasonable efforts to include guidance on how the student's participation in the program contributes to prospective college and career pathways. Such efforts by the district shall be performed prior to a student participating in the program and throughout the student's involvement in the program.

(11) Policies and procedures for participating in the program established by the public school must be such that students have an opportunity to participate in the program and meet district-established timelines and requirements for financial transactions, transcribing credits and state department of education reporting. Participation in this program requires parent and student agreement to program requirements and completion of the state department of education's participation form documenting the program requirements.

(12) Parents of participating students may enroll their child in any eligible course, with or without the permission of the public school in which the student is enrolled. Tribal school students must follow their schools' enrollment policies and procedures. Public school personnel shall assist parents in the process of enrolling students in such courses. Each participating student's high school transcript at the public school at which the student is enrolled shall include the credits earned and grades received by the student for any overload or dual credit courses taken pursuant to this section. For an eligible course to be transcribed as meeting the requirements

of a core subject as identified in administrative rule, the course must meet the approved content standards for the applicable subject and grade level.

(13) Participating public schools shall collaborate with Idaho public postsecondary educational institutions to assist students who seek to participate in dual credit courses or graduate from high school early by enrolling in postsecondary courses. Participating school districts, charter schools and Idaho public postsecondary educational institutions shall report to the state board of education and the education committees of the senate and the house of representatives any difficulties or obstacles they experience in providing assistance to participating students.

(14) The state board of education may promulgate rules to implement the provisions of this chapter.

### **History.**

**I.C., § 33-4602**, as added by 2016, ch. 166, § 3, p. 450; am. 2018, ch. 100, § 2, p. 209; am. 2019, ch. 263, § 1, p. 773.

## **STATUTORY NOTES**

### **Cross References.**

Department of education, § 33-725 et seq.

Educational support program, § 33-1002.

### **Prior Laws.**

Former § 33-4602, Advanced opportunities, which comprised **I.C., § 33-4602**, as added by S.L. 2015, ch. 58, § 4, p. 151, was repealed by S.L. 2016, ch. 166, § 2, effective July 1, 2016.

Another former § 33-4602, Public policy, which comprised **I.C., § 33-4602**, as added by 1991, ch. 60, § 1, p. 137, was repealed by S.L. 2013, ch. 72, § 8, effective July 1, 2014.

### **Amendments.**

The 2018 amendment, by ch. 100, substituted “postsecondary credit-bearing examinations and career technical certificate” for “college credit-bearing examinations and professional certificate” in the first sentence of the introductory paragraph of subsection (1), rewrote paragraphs (1)(a)

through (1)(c), which formerly read: “(a) Overload courses, the distribution of which may not exceed two hundred twenty-five dollars (\$ 225) per overload course. A student must take and successfully be completing a full credit load within a given school year to be eligible for funding of an overload course. An overload course must be taken for high school credit to be eligible for funding. (b) Dual credits, the distribution of which may not exceed seventy-five dollars (\$ 75.00) per one (1) dual credit hour. (c) Eligible college credit-bearing or professional certificate examinations”, and added paragraph (1)(d); rewrote subsection (2), which formerly read: “To qualify as an eligible overload course for the program, the course must be offered by a provider accredited by the organization that accredits Idaho high schools and be taught by an individual certified to teach the grade and subject area of the course in Idaho. Eligible examinations include advanced placement (AP), international baccalaureate (IB), college-level examination program (CLEP) and professional-technical examinations. The state department of education shall maintain a list of such examinations and costs”; substituted “section” for “subsection” in three places in subsection (3); in subsection (5), added the last sentence; and deleted “payments that would otherwise be made by a county to a community college” following “tuition” in the first sentence of subsection (9).

The 2019 amendment, by ch. 263, in subsection (1), added “and career technical education workforce training courses” at the end of the first sentence in the introductory paragraph, rewrote paragraph (1)(c)(iv), which formerly read: “Career technical examinations”, rewrote paragraph (1)(d), which formerly read: “Career technical education (CTE) including assessments that lead to a badge recognized by the division of career technical education. The division of career technical education shall maintain a list of eligible CTE examinations and costs”; inserted the present second sentence in subsection (3); in subsection (8), in the first sentence, substituted “or successfully complete a course” for “for any course” near the beginning and substituted “credit or complete one” for “for one” near the middle.

### **Compiler’s Notes.**

The abbreviations enclosed in parentheses so appeared in the law as enacted.



### **33-4603. “8 in 6 program.” [Repealed.]**

Repealed by S.L. 2016, ch. 166, § 4, effective July 1, 2016. For present comparable provisions, see § 33-4602.

#### **History.**

**I.C., § 33-4603**, as added by 2015, ch. 58, § 4, p. 151.

### **STATUTORY NOTES**

#### **Prior Laws.**

Another former § 33-4603, Purposes, which comprised **I.C., § 33-4603**, as added by 1991, ch. 60, § 1, p. 137; am. 1999, ch. 329, § 21, p. 852, was repealed by S.L. 2013, ch. 72, § 8, effective July 1, 2014.

#### **Compiler’s Notes.**

S.L. 2016, ch. 25, § 27 purported to amend this section; however, S.L. 2016, ch. 166, § 4 repealed this section effective July 1, 2016.

### **33-4604. Mastery advancement program. [Repealed.]**

Repealed by S.L. 2016, ch. 166, § 5, effective July 1, 2016. For present comparable provisions, see § 33-4602.

#### **History.**

**I.C., § 33-4604**, as added by 2015, ch. 58, § 4, p. 151.

### **STATUTORY NOTES**

#### **Prior Laws.**

Another former § 33-4604, Definitions, which comprised **I.C., § 33-4604**, as added by 1991, ch. 60, § 1, p. 137; am. 2010, ch. 235, § 18, p. 542, was repealed by S.L. 2013, ch. 72, § 8, effective July 1, 2014.

**33-4605. Postsecondary credit scholarship.** — (1) Subject to the provisions of subsections (2), (3) and (4) of this section, beginning with the spring 2016 graduating class:

(a) Any student who has earned at least ten (10) postsecondary semester credits upon graduation from an accredited high school in Idaho, or its equivalent, shall be entitled to a postsecondary credit scholarship in the amount of two thousand dollars (\$2,000) that shall be used for tuition and fees at any eligible institution.

(b) Any student who has earned at least twenty (20) postsecondary semester credits upon graduation from an accredited high school in Idaho, or its equivalent, shall be entitled to a postsecondary credit scholarship in the amount of four thousand dollars (\$4,000) that shall be used for tuition and fees at any eligible institution.

(c) Any student who has earned an associate degree from an accredited institution upon graduation from an accredited high school in Idaho, or its equivalent, shall be entitled to a postsecondary credit scholarship in the amount of eight thousand dollars (\$8,000) that shall be used for tuition and fees at any eligible institution.

(2) For subsection (1)(a) and (b) of this section, the award amount shall be limited by the number of credits accepted by the eligible institution where the scholarship is to be applied. For subsection (1)(a) through (c) of this section, the awards shall be annual awards and one-quarter ( $\frac{1}{4}$ ) of the scholarship amount shall be distributed in each semester of full-time attendance until the total scholarship is expended or expires.

(3) In order to be eligible for a full postsecondary credit scholarship set forth in subsection (1) of this section:

(a) The student must be awarded a postsecondary merit-based scholarship in an amount at least equal to the postsecondary credit scholarship amount awarded in the same school year, provided that the match funds for each scholarship must come from a business or industry, or entities representing business or industry, and may not be from appropriated or nonappropriated funds of the postsecondary institution or from a

foundation affiliated with the postsecondary institution, unless the funds were donated to the postsecondary institution specifically as a match for the postsecondary credit scholarship program;

(b) The student must have graduated from an accredited high school in Idaho, or its equivalent; and

(c) Except for the first semester in which the postsecondary credit scholarship amount is distributed, in order to receive the scholarship distribution in a given semester, the student must have successfully passed at least twelve (12) credits during the immediately preceding semester in which the scholarship was distributed.

(4) Eligible students will be awarded the postsecondary credit scholarship based on grade point average rank subject to annual legislative appropriation.

(5) A student shall use the postsecondary credit scholarship within four (4) years of his or her high school graduation date, at which time the scholarship shall expire and may no longer be used.

(6) A student is entitled to only one (1) of the postsecondary credit scholarships set forth in subsection (1) of this section.

(7) If a student has been awarded scholarships that pay for one hundred percent (100%) of the cost of tuition and fees, then part or all of the remaining postsecondary credit scholarship moneys may be used for room and board at the discretion of the eligible institution where the student will attend.

(8) This section shall be funded from the advanced opportunities program within the educational support program. The state department of education shall pass through to the office of the state board of education the necessary amount for distribution not to exceed one million dollars (\$1,000,000) in fiscal year 2017, and not to exceed two million dollars (\$2,000,000) in fiscal year 2018, and every fiscal year thereafter.

(9) No later than January 15 of each year, the state board of education shall report to the senate and the house of representatives education committees the number of scholarships awarded pursuant to this section during the previous school year. The report shall include the total amount of moneys distributed for the scholarships.

(10) For the purposes of this section, “eligible institution” has the same meaning as provided in [section 33-4303\(2\)\(b\), Idaho Code](#).

(11) As used in this section, “merit-based scholarship” means a scholarship in which academic achievement at the high school level is a minimum eligibility requirement and awards are made based on the achievement of the student.

### **History.**

[I.C., § 33-4605](#), as added by 2016, ch. 374, § 3, p. 1091; am. 2017, ch. 268, § 1, p. 664.

## **STATUTORY NOTES**

### **Cross References.**

Department of education, § 33-725 et seq.

State board of education, § 33-101 et seq.

### **Prior Laws.**

Former § 33-4605, Rulemaking authority, which comprised [I.C., § 33-4605](#), as added by S.L. 2015, ch. 58, § 4, p. 151, was repealed by S.L. 2016, ch. 166, § 6 and S.L. 2016, ch. 374, s. 2, both effective July 1, 2016.

Another former § 33-4605, Eligibility — Maximum amounts — Conditions, which comprised [I.C., § 33-4605](#), as added by 1991, ch. 60, § 1, p. 137, was repealed by S.L. 2013, ch. 72, § 8, effective July 1, 2014.

### **Amendments.**

The 2017 amendment, by ch. 268, in subsection (3), substituted “may not be from appropriated or nonappropriated funds of the postsecondary institution or from a foundation affiliated with the postsecondary institution, unless the funds were donated to the postsecondary institution specifically as a match for the postsecondary credit scholarship program” for “may not be from a foundation affiliated with the postsecondary institution or from appropriated or nonappropriated funds of the postsecondary institution” at the end of paragraph (a).

### **Compiler’s Notes.**

S.L. 2016, Chapter 374 became law without the signature of the governor.



## **CHAPTER 47**

### **STEM SCHOOL DESIGNATION**

Section.

33-4701. STEM school designation for public schools.

33-4702. Administration of the account. [Repealed.]

33-4703. Advisory committee established. [Repealed.]

33-4704. Annual report. [Repealed.]



**33-4701. STEM school designation for public schools.** — (1) As used in this section:

- (a) “STEM” means comprehensive science, technology, engineering and mathematics.
- (b) “STEM instruction” means multidisciplinary science, technology, engineering and mathematics instruction.
- (c) “STEM school designation” and “STEM program designation” mean the designations earned by meeting the criteria as established in this section.
- (d) “STEM program” means a course of study, institute or academy within a school that is multigrade and multidiscipline consisting of STEM instruction.

(2) The state board of education shall award STEM school and STEM program designations annually to those public schools and public school programs that meet the standards established by the state board of education in collaboration with the STEM action center.

(3) To be eligible to apply for a STEM designation, the school must meet the standards and application requirements established by the state board of education and the STEM action center, including the following:

- (a) Be a current public school in Idaho that serves students in kindergarten through grade 12, or a subset of grades between kindergarten and grade 12;
- (b) Apply to the STEM action center for a STEM school designation review to include evaluation of the following:
  - (i) STEM instruction and curriculum focused on problem-solving, student involvement in team-driven project-based learning, and engineering design process;
  - (ii) College and career exposure, exploration and advising;
  - (iii) Relevant professional learning opportunities for staff;

- (iv) Community and family involvement;
  - (v) Integration of technology and physical resources to support STEM instruction;
  - (vi) Collaboration with institutions of higher education and industry;
  - (vii) Capacity to capture and share knowledge for best practices and innovative professional development with the STEM action center; and
  - (viii) Support of nontraditional and historically underserved student populations in STEM program areas.
- (c) Adopt a plan of STEM implementation that includes, but is not limited to, how the school and district integrate proven best practices into non-STEM courses and practices and how lessons learned are shared with other schools within the district and throughout the state.
- (4) The STEM action center board shall make recommendations annually to the state board of education for the award of a STEM school designation.
- (5) STEM designations shall be valid for a term of five (5) school years. At the end of each designation term, a school may apply to renew its STEM designation. Schools may apply to expand a STEM program designation to a STEM school designation, in alignment with established deadlines, at any time during the term of the STEM program designation.
- (6) The STEM action center and the state board of education shall provide a report to the legislature annually on the implementation of this chapter.
- (7) The state board of education may promulgate rules for the administration and implementation of this chapter.

### **History.**

I.C., § 33-4701, as added by 2017, ch. 69, § 2, p. 167.

## **STATUTORY NOTES**

### **Cross References.**

State board of education, § 33-101.

STEM action center, § 67-823.

### **Prior Laws.**

Former chapter 47 of Title 33, Youth Education Account, which comprised the following sections, was repealed by S.L. 2016, ch. 88, § 1, effective July 1, 2016.

33-4701. Youth education fund established. [I.C., § 33-4701, as added by 1992, ch. 137, § 1, p. 426; am. 2000, ch. 469, § 83, p. 1450.]

33-4702. Administration of the account [fund]. [I.C., § 33-4702, as added by 1992, ch. 137, § 1, p. 426.]

33-4703. Advisory committee established. [I.C., § 33-4703, as added by 1992, ch. 137, § 1, p. 426.]

33-4704. Annual report. [I.C., § 33-4704, as added by 1992, ch. 137, § 1, p. 426.]

### **Legislative Intent.**

Section 1 of S.L. 2017, ch. 69 provided: “Legislative Intent. It is the intent of the Legislature to encourage and support schools in developing comprehensive science, technology, engineering and math (STEM) learning environments for their students by establishing criteria for schools to earn a STEM school designation that will serve as an indicator for parents and students who are looking for STEM school experiences in Idaho. A STEM designation will be based on evidence that the school will offer a rigorous, diverse, integrated and project-based curriculum to students, with the goal of preparing those students for post-secondary education, the workforce and citizenship”.

**33-4702. Administration of the account. [Repealed.]**

Repealed by S.L. 2016, ch. 88, § 1, effective July 1, 2016.

**History.**

I.C., § 33-4702, as added by 1992, ch. 137, § 1, p. 426.

**33-4703. Advisory committee established. [Repealed.]**

Repealed by S.L. 2016, ch. 88, § 1, effective July 1, 2016.

**History.**

I.C., § 33-4703, as added by 1992, ch. 137, § 1, p. 426.

Idaho Code 33-4704

**33-4704. Annual report. [Repealed.]**

Repealed by S.L. 2016, ch. 88, § 1, effective July 1, 2016.

**History.**

I.C., § 33-4704, as added by 1992, ch. 137, § 1, p. 426.



## **CHAPTER 48**

### **IDAHO EDUCATIONAL TECHNOLOGY INITIATIVE**

Section.

33-4801. Short title.

33-4802. Findings.

33-4803. Definitions.

33-4804. Public school digital content and curriculum fund.

33-4805. Evaluations and audits.

33-4806, 33-4807. [Amended and Redesignated.]

33-4808. Severability.

33-4809. Higher education information technology committee. [Repealed.]

33-4810. Public education information technology committee. [Repealed.]

33-4811. Technology pilot projects. [Repealed.]



**33-4801. Short title.** — This chapter shall be known and may be cited as the “Idaho Educational Technology Initiative of 1994.”

**History.**

I.C., § 33-4801, as added by 1994, ch. 229, § 1, p. 716.

**STATUTORY NOTES**

**Compiler’s Notes.**

Two 1994 acts, Chapters 229 and 234, purported to create a new Chapter 48 in Title 33. Chapter 229 was compiled as Title 33, Chapter 48 (§§ 33-4801 to 33-4808) while chapter 234 was designated by the compiler, through the use of brackets, as Title 33, Chapter 49 (§§ 33-4901 to 33-4906). The redesignation of the provisions enacted by S.L. 1994, Chapter 234 was made permanent by S.L. 2005, Chapter 25.

**33-4802. Findings.** — The legislature hereby finds, determines, and declares that the state of Idaho recognizes the importance of applying technology to meet the public need for an improved, thorough, and seamless public education system for elementary and secondary education, education of the hearing or visually impaired, postsecondary and higher education, and public libraries. The legislature has funded technology infrastructure to enable the state’s public schools to have the necessary technology that supports student learning, but many districts are unable to maximize the technology infrastructure at the classroom level by adding digital content and curriculum.

**History.**

I.C., § 33-4802, as added by 1994, ch. 229, § 1, p. 716; am. 1998, ch. 40, § 1, p. 172; am. 1999, ch. 327, § 1, p. 835; am. 2009, ch. 168, § 5, p. 502; am. 2020, ch. 324, § 1, p. 939.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 168, deleted “at the Idaho school for the deaf and blind” following “visually impaired.”

The 2020 amendment, by ch. 324, added the last sentence.

**33-4803. Definitions.** — As used in this chapter:

(1) “Educational segments” are, individually, the public elementary and secondary school system, the Idaho bureau of educational services for the deaf and the blind, the career technical education system, the commission for libraries, the state historical society, Idaho public television, the community colleges, the four-year colleges and universities, the state department of education and the office of the state board of education.

(2) “Libraries” means district, city, school/community libraries, and the commission for libraries as described in chapters 25, 26 and 27, title 33, Idaho Code.

(3) “Technology” means all present and future forms of computer hardware, computer software and services used or required for automated data processing, computer-related office automation or telecommunications.

(4) “Telecommunications” means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance.

**History.**

I.C., § 33-4803, as added by 1994, ch. 229, § 1, p. 716; am. 1998, ch. 40, § 2, p. 172; am. 1999, ch. 327, § 2, p. 835; am. 1999, ch. 329, § 22, p. 852; am. 2006, ch. 235, § 30, p. 701; am. 2009, ch. 168, § 6, p. 502; am. 2016, ch. 25, § 28, p. 35.

**STATUTORY NOTES**

**Cross References.**

Commission for libraries, § 33-2501 et seq.

Educational services for the deaf and the blind, § 33-3401 et seq.

State historical society, § 67-4113 et seq.

**Amendments.**

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 327, § 2, deleted former subsections (2) and (3), redesignated former subsections (4) and (5) as subsections (2) and (3) and added subsection (4); in subsection (1), inserted “the state library, the state historical society, Idaho public television” following “the vocational education system,” inserted “the state department of education and the office of the state board of education” following “four-year colleges and universities”; in subsection (2), inserted “and the state library” following “community libraries,” inserted “25” preceding “26”; and rewrote subsection (3).

The 1999 amendment, by ch. 329, § 22, in subsection (1), substituted “professional-technical” for “vocational-technical”.

The 2006 amendment, by ch. 235, in subsections (1) and (2), substituted “commission for libraries” for “state library.”

The 2009 amendment, by ch. 168, substituted “the Idaho bureau of educational services for the deaf and the blind” for “the Idaho school for the deaf and blind” in subsection (1).

The 2016 amendment, by ch. 25, substituted “career technical education” for “professional-technical education” near the beginning of subsection (1)

**33-4804. Public school digital content and curriculum fund. — (1)**

There is hereby established in the state treasury the public school digital content and curriculum fund, to be administered by the state department of education, which shall make available moneys in the fund, subject to appropriation, for schools to provide Idaho classrooms, including classrooms at the Idaho bureau of educational services for the deaf and the blind, with digital content and curriculum that directly impact student achievement and improve performance. Curriculum programs shall be designed to enhance outcomes for students in career technical education, character education, enrichment activities, reading and mathematics, and activities that increase grade-to-grade promotion and enhance career and college readiness. Moneys from the fund may also be spent on academic text support systems that include authentic fiction and nonfiction books, provide reader supports, provide teaching tools, and promote parent engagement. Moneys in the fund shall consist of legislative appropriations and are continuously appropriated for the purposes identified in this section. Any interest earned on idle moneys in the fund shall be returned to the fund.

(2) Subject to availability, moneys in the fund shall be distributed at the request of a local education agency (LEA) and shall be based on the amount requested. A single request must not exceed fifty thousand dollars (\$50,000). Distributions from the fund shall be made on a first-come, first-served basis to LEAs that meet the criteria outlined in this subsection. If an LEA meets such criteria but a distribution cannot be made due to lack of available moneys, such LEA's request shall be prioritized, in the order received, once moneys become available. Two (2) or more LEAs may jointly request a distribution. To qualify for funding, an LEA must:

- (a) Have technology infrastructure in place to facilitate usage of the digital content and curriculum; and
- (b) Submit an explanation for how the distribution will be used to improve performance and enhance student achievement. Explanations should include:
  - (i) The amount of moneys requested;

- (ii) The type of content or curriculum to be purchased;
- (iii) How the purchase will assist the LEA in meeting its identified measurable targets from its continuous improvement plan as described in [section 33-320, Idaho Code](#); and
- (iv) How progress toward those targets will be measured.

(3) Additional distributions shall be granted to an LEA only if, after the initial distribution, the LEA has met or is making demonstrable progress toward its measurable targets.

### **History.**

[I.C., § 33-4806](#), as added by 1994, ch. 229, § 1, p. 716; am. 1998, ch. 40, § 3, p. 172; am. and redesign. 2009, ch. 27, § 2, p. 79; am. 2009, ch. 168, § 7, p. 502; am. 2020, ch. 324, § 2, p. 939.

## **STATUTORY NOTES**

### **Cross References.**

Educational services for deaf and blind, § 33-3401 et seq.

### **Prior Laws.**

Former § 33-4804, which comprised [I.C., § 33-4804](#), as added by 1994, ch. 229, § 1, p. 716; am. 1999, ch. 327, § 3, p. 835, was repealed by S.L. 2009, ch. 27, § 1.

### **Amendments.**

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 27, redesignated this section from section 33-4806; in the first sentence, inserted “to be implemented by the state department of education” and substituted “Idaho school for the deaf and the blind” for “Idaho school for the deaf and blind”; and, in the last sentence, deleted “by the council; and other elements as prescribed by the council” from the end.

The 2009 amendment, by ch. 168, substituted “the Idaho bureau of educational services for the deaf and the blind” for “the Idaho school for the

deaf and blind” in the first sentence.

The 2020 amendment, by ch. 327, rewrote the section to the extent that a detailed comparison is impracticable.

**33-4805. Evaluations and audits.** — The legislative services office shall, from time to time as directed by the legislature, evaluate and audit the relative impact, costs and benefits of each of the educational technology programs conducted pursuant to this chapter. The state department of education shall report to the legislature and the governor each year on or before October 1 as to the relative impact, cost and benefit of the educational technology program conducted pursuant to this chapter.

**History.**

I.C., § 33-4807, as added by 1994, ch. 229, § 1, p. 716; am. 1996, ch. 45, § 1, p. 118; am. 1999, ch. 327, § 5, p. 835; am. and redesign. 2009, ch. 27, § 3, p. 79.

**STATUTORY NOTES**

**Cross References.**

Legislative services office, § 67-701 et seq.

**Compiler's Notes.**

Former § 33-4805, which comprised I.C., § 33-4805, as added by 1994, ch. 229, § 1, p. 716; am. 1999, ch. 327, § 4, p. 835, was repealed by S.L. 2009, ch. 27, § 1.

**Amendments.**

The 2009 amendment, by ch. 27, redesignated this section from section 33-4807 and substituted “department” for “board” in the last sentence.



**33-4806. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 33-4806 was amended and redesignated as § 33-4804 by S.L. 2009, ch. 27, § 2.

**33-4807. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 33-4807 was amended and redesignated as § 33-4805 by S.L. 2009, ch. 27, § 2.

**33-4808. Severability.** — The provisions of this chapter are hereby declared severable, and in the event that any word, phrase, sentence, clause, paragraph or section of this chapter be determined by a court of competent jurisdiction to be invalid for any reason, such partial invalidity shall not affect the validity of the remainder of this chapter.

**History.**

I.C., § 33-4808, as added by 1994, ch. 229, § 1, p. 716.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1994, ch. 229 declared an emergency. Approved March 30, 1994.

**33-4809. Higher education information technology committee.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 33-4809, as added by 1999, ch. 327, § 6, p. 835, was repealed by S.L. 2009, ch. 27, § 4.

**33-4810. Public education information technology committee.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 33-4810, as added by 1999, ch. 327, § 7, p. 835, was repealed by S.L. 2009, ch. 27, § 4.

Idaho Code 33-4811

**33-4811. Technology pilot projects. [Repealed.]**

Repealed by S.L. 2013, ch. 338, § 7, effective July 1, 2014.

**History.**

I.C., § 33-4811, as added by 2013, ch. 338, § 6, p. 877.



## **CHAPTER 49**

### **MOTORCYCLE SAFETY PROGRAM**

Section.

33-4901. Cooperation.

33-4902. Motorcycle safety program.

33-4903. Implementing authority.

33-4904. Motorcycle safety program fund.

33-4905. Advisory committee.

33-4906. Annual report on the program.



**33-4901. Cooperation.** — In conjunction with its supervision of traffic on public highways, the Idaho transportation department is directed to cooperate with the division of career technical education in its establishment of a motorcycle rider safety program for the state of Idaho.

### **History.**

**I.C., § 33-4801**, as added by 1994, ch. 234, § 10, p. 728; am. and redesign. 2005, ch. 25, § 51, p. 82; am. 2009, ch. 30, § 1, p. 82; am. 2016, ch. 25, § 29, p. 35.

## **STATUTORY NOTES**

### **Cross References.**

Division of career technical education, § 33-2205.

Idaho transportation department, § 40-501 et seq.

### **Amendments.**

The 2009 amendment, by ch. 29, in the section catchline, deleted “between departments” from the end; and, in text, substituted “division of professional-technical education” for “department of education.”

The 2016 amendment, by ch. 25, substituted “career technical education” for “professional-technical education” near the middle of the section.

### **Compiler’s Notes.**

Two 1994 acts, Chapters 229 and 234, purported to create a new Chapter 48 in Title 33. Chapter 229 has been compiled as Title 33, Chapter 48 (§§ 33-4801 to 33-4808) while chapter 234 was redesignated by the compiler, through the use of brackets, as Title 33, Chapter 49 (§§ 33-4901 to 33-4906). The redesignation of the provisions enacted by S.L. 1994, Chapter 234 was made permanent by S.L. 2005, Chapter 25.

### **Effective Dates.**

Section 11 of S.L. 1994, ch. 234 provided that this act shall be in full force and effect on and after September 1, 1994.

**33-4902. Motorcycle safety program.** — (1) The division of career technical education shall develop standards for, establish and administer the Idaho motorcycle safety program.

(2) The division of career technical education shall establish standards for the motorcycle rider training course, including standards for course curriculum and student evaluation and testing, and shall meet or exceed established national standards for motorcycle rider training courses in effect as of September 1, 1994.

(3) The program shall include activities to increase motorcyclists' alcohol and drug effects awareness, motorcycle rider improvement efforts, program promotion activities, and other efforts to enhance motorcycle safety through education, including enhancement of public awareness of motorcycles.

(4) The administrator of the division of career technical education shall appoint a program coordinator to oversee and direct the program.

(5) The division of career technical education shall establish standards for the training and approval of motorcycle rider training instructors and skills examiners which shall meet or exceed established national standards for such instructors and skills examiners in effect as of September 1, 1994.

### **History.**

**I.C., § 33-4802**, as added by 1994, ch. 234, § 10, p. 728; am. and redesign. 2005, ch. 25, § 52, p. 82; am. 2009, ch. 30, § 2, p. 82; am. 2016, ch. 25, § 30, p. 35.

## **STATUTORY NOTES**

### **Cross References.**

Division of career technical education, § 33-2205.

### **Amendments.**

The 2009 amendment, by ch. 30, throughout the section, substituted “division of professional-technical education” for “department of education”; and, in subsection (4), substituted “administrator of the division

of professional-technical education” for “superintendent of public instruction.”

The 2016 amendment, by ch. 25, substituted “division of career technical education” for “division of professional-technical education” throughout the section.

**Compiler’s Notes.**

For model national administrative standards for state motorcycle rider training programs, see [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/modelnatladminmotorcycle.pdf) /812071-modelnatladminmotorcycle.pdf.

**33-4903. Implementing authority.** — (1) The state board for career technical education shall adopt rules which are necessary to carry out the motorcycle safety program.

(2) The division of career technical education may enter into contracts with public or private entities for course delivery and for the provision of services or materials necessary for administration and implementation of the program.

(3) The division of career technical education may offer motorcycle rider training courses directly and may approve courses offered by public or private entities as authorized program courses if they are administered and taught in full compliance with standards established for the state program.

(4) The division of career technical education may establish reasonable enrollment fees to be charged for persons who participate in a motorcycle rider training course.

(5) The division of career technical education may utilize available program funds to defray expenses in offering motorcycle rider training courses and may reimburse entities which offer approved courses for the expenses incurred in offering the courses in order to minimize any course enrollment fee charged to the students.

### **History.**

**I.C., § 33-4803**, as added by 1994, ch. 234, § 10, p. 728; am. and redesign. 2005, ch. 25, § 53, p. 82; am. 2009, ch. 30, § 3, p. 82; am. 2016, ch. 25, § 31, p. 35.

## **STATUTORY NOTES**

### **Cross References.**

Division of career technical education, § 33-2205.

State board for career technical education, § 33-2202.

### **Amendments.**

The 2009 amendment, by ch. 30, throughout the section, substituted “division of professional-technical education” for “department of education”; and, in subsection (1), substituted “state board for professional-technical education” for “department of education.”

The 2016 amendment, by ch. 25, substituted “career technical education” for “professional-technical education” throughout the section.

**33-4904. Motorcycle safety program fund.** — (1) The motorcycle safety program fund is established in the state treasury and appropriated on a continual basis to the division of career technical education which shall administer the moneys. Money in the fund shall only be used for administration and implementation of the program, including reimbursement of entities which offer approved motorcycle rider training courses.

(2) At the end of each fiscal year, moneys remaining in the motorcycle safety program fund shall be retained in said fund and shall not revert to any other general fund. The interest and income earned on money in the fund, after deducting any applicable charges, shall be credited to and remain in the motorcycle safety program fund.

(3) Revenue credited to the fund shall include one dollar (\$1.00) of each fee for a class A, B, C or D driver's license as provided in [section 49-306, Idaho Code](#).

(4) Revenue credited to the fund shall include amounts collected for each motorcycle safety program fee imposed pursuant to [section 49-453, Idaho Code](#).

### **History.**

[I.C., § 33-4804](#), as added by 1994, ch. 234, § 10, p. 728; am. and redesign. 1998, ch. 110, § 4, p. 375; am. 1999, ch. 81, § 1, p. 237; am. 2005, ch. 308, § 1, p. 960; am. 2009, ch. 30, § 4, p. 82; am. 2016, ch. 25, § 32, p. 35.

## **STATUTORY NOTES**

### **Amendments.**

The 2009 amendment, by ch. 30, substituted “division of professional-technical education” for “department of education” in subsection (1).

The 2016 amendment, by ch. 25, substituted “division of career technical education” for “division of professional-technical education” near the end of the first sentence in subsection (1).

**Compiler's Notes.**

This section was enacted as § 33-4804 and was redesignated as § 33-4904 as another § 33-4804 was enacted by S.L. 1994, Chapter 229. The redesignation was made permanent by S.L. 1998, Chapter 110.

**33-4905. Advisory committee.** — The administrator of the division of career technical education shall establish a program advisory committee consisting of five (5) persons representing various interests in motorcycle safety including, but not limited to, motorcycle riding enthusiasts, dealers and law enforcement personnel. Committee members shall advise the program coordinator in developing, establishing and maintaining the program. The committee shall monitor program implementation and report to the administrator as necessary with recommendations. Members of the committee shall serve without compensation but may be reimbursed for their reasonable expenses while engaged in committee business.

**History.**

I.C., § 33-4805, as added by 1994, ch. 234, § 10, p. 728; am. and redesign. 2005, ch. 25, § 54, p. 82; am. 2009, ch. 30, § 5, p. 82; am. 2016, ch. 25, § 33, p. 35.

## STATUTORY NOTES

**Cross References.**

Division of career technical education, § 33-2205.

**Amendments.**

The 2009 amendment, by ch. 30, in the first sentence, substituted “administrator of the division of professional-technical education” for “superintendent of public instruction”; and, in the next-to-last sentence, substituted “administrator” for “superintendent.”

The 2016 amendment, by ch. 25, substituted “division of career technical education” for “division of professional-technical education” near the beginning of the first sentence.



**33-4906. Annual report on the program.** — The division of career technical education shall prepare a public report annually. The report shall be completed with the assistance of the program coordinator and the program advisory committee. The report shall include the number and location of various courses offered, the number of instructors approved, the number of students trained in various courses, other information about program implementation as deemed appropriate, and an assessment of the overall impact of the program on motorcycle safety in the state. The report shall also provide a complete accounting of revenue receipts of the motorcycle safety program fund and of all moneys expended under the program.

**History.**

I.C., § 33-4806, as added by 1994, ch. 234, § 10, p. 728; am. and redesign. 2005, ch. 25, § 55, p. 82; am. 2009, ch. 30, § 6, p. 82; am. 2016, ch. 25, § 34, p. 35.

**STATUTORY NOTES**

**Cross References.**

Division of career technical education, § 33-2205.

Motorcycle safety program advisory committee, § 33-4905.

Motorcycle safety program coordinator, § 33-4902.

Motorcycles safety program fund, § 33-4904.

**Amendments.**

The 2009 amendment, by ch. 30, substituted “division of professional-technical education” for “department of education” in the first sentence.

The 2016 amendment, by ch. 25, substituted “division of career technical education” for “division of professional-technical education” near the beginning of the first sentence.

**Effective Dates.**

Section 11 of S.L. 1994, ch. 234 provided this act shall be in full force and effect on and after September 1, 1994.



## **CHAPTER 50**

# **UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT**

Section.

33-5001. Short title.

33-5002. Definitions.

33-5003. Standard of conduct in managing and investing institutional fund.

33-5004. Appropriation for expenditure or accumulation of endowment fund — Rules of construction.

33-5005. Delegation of management and investment functions.

33-5006. Release or modification of restrictions on management, investment or purpose.

33-5007. Reviewing compliance.

33-5008. Application to existing institutional funds.

33-5009. Relation to electronic signatures in global and national commerce act.

33-5010. Uniformity of application and construction.

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## **OFFICIAL COMMENT**

### **PREFATORY NOTE**

**Reasons for Revision.** The Uniform Prudent Management of Institutional Funds Act (UPMIFA) replaces the Uniform Management of Institutional Funds Act (UMIFA). The National Conference of Commissioners on Uniform State Laws approved UMIFA in 1972, and 47 jurisdictions have enacted the act. UMIFA provided guidance and authority to charitable organizations within its scope concerning the management and investment of funds held by those organizations, UMIFA provided

endowment spending rules that did not depend on trust accounting principles of income and principal, and UMIFA permitted the release of restrictions on the use or management of funds under certain circumstances. The changes UMIFA made to the law permitted charitable organizations to use modern investment techniques such as total-return investing and to determine endowment fund spending based on spending rates rather than on determinations of “income” and “principal.”

UMIFA was drafted almost 35 years ago, and portions of it are now out of date. The prudence standards in UMIFA have provided useful guidance, but prudence norms evolve over time. The new Act provides modern articulations of the prudence standards for the management and investment of charitable funds and for endowment spending. The Uniform Prudent Investor Act (UPIA), an Act promulgated in 1994 and already enacted in 43 jurisdictions, served as a model for many of the revisions. UPIA updates rules on investment decision making for trusts, including charitable trusts, and imposes additional duties on trustees for the protection of beneficiaries. UPMIFA applies these rules and duties to charities organized as nonprofit corporations. UPMIFA does not apply to trusts managed by corporate and other fiduciaries that are not charities, because UPIA provides management and investment standards for those trusts.

In applying principles based on UPIA to charities organized as nonprofit corporations, UPMIFA combines the approaches taken by UPIA and by the Revised Model Nonprofit Corporation Act (RMNCA). UPMIFA reflects the fact that standards for managing and investing institutional funds are and should be the same regardless of whether a charitable organization is organized as a trust, a nonprofit corporation, or some other entity. *See* Bevis Longstreth, *Modern Investment Management and the Prudent Man Rule* 7 (1986) (stating “[t]he modern paradigm of prudence applies to all fiduciaries who are subject to some version of the prudent man rule, whether under ERISA, the private foundation provisions of the Code, UMIFA, other state statutes, or the common law.”); Harvey P. Dale, *Nonprofit Directors and Officers — Duties and Liabilities for Investment Decisions*, 1994 N.Y.U. Conf. Tax Plan. 501(c)(3) Org’s. Ch. 4.

UPMIFA provides guidance and authority to charitable organizations concerning the management and investment of funds held by those organizations, and UPMIFA imposes additional duties on those who

manage and invest charitable funds. These duties provide additional protections for charities and also protect the interests of donors who want to see their contributions used wisely.

UPMIFA modernizes the rules governing expenditures from endowment funds, both to provide stricter guidelines on spending from endowment funds and to give institutions the ability to cope more easily with fluctuations in the value of the endowment.

Finally, UPMIFA updates the provisions governing the release and modification of restrictions on charitable funds to permit more efficient management of these funds. These provisions derive from the approach taken in the Uniform Trust Code (UTC) for modifying charitable trusts. Like the UTC provisions, UPMIFA's modification rules preserve the historic position of the attorneys general in most states as the overseers of charities.

As under UMIFA, the new Act applies to charities organized as charitable trusts, as nonprofit corporations, or in some other manner, but the rules do not apply to funds managed by trustees that are not charities. Thus, the Act does not apply to trusts managed by corporate or individual trustees, but the Act does apply to trusts managed by charities.

**Prudent Management and Investment.** UMIFA applied the 1972 prudence standard to investment decision making. In contrast, UPMIFA will give charities updated and more useful guidance by incorporating language from UPIA, modified to fit the special needs of charities. The revised Act spells out more of the factors a charity should consider in making investment decisions, thereby imposing a modern, well accepted, prudence standard based on UPIA.

Among the expressly enumerated prudence factors in UPMIFA is "the preservation of the endowment fund," a standard not articulated in UMIFA.

In addition to identifying factors that a charity must consider in making management and investment decisions, UPMIFA requires a charity and those who manage and invest its funds to:

1. Give primary consideration to donor intent as expressed in a gift instrument,

2. Act in good faith, with the care an ordinarily prudent person would exercise,
3. Incur only reasonable costs in investing and managing charitable funds,
4. Make a reasonable effort to verify relevant facts,
5. Make decisions about each asset in the context of the portfolio of investments, as part of an overall investment strategy,
6. Diversify investments unless due to special circumstances, the purposes of the fund are better served without diversification,
7. Dispose of unsuitable assets, and
8. In general, develop an investment strategy appropriate for the fund and the charity.

UMIFA did not articulate these requirements.

Thus, UPMIFA strengthens the rules governing management and investment decision making by charities and provides more guidance for those who manage and invest the funds.

**Donor Intent with Respect to Endowments.** UPMIFA improves the protection of donor intent with respect to expenditures from endowments. When a donor expresses intent clearly in a written gift instrument, the Act requires that the charity follow the donor's instructions. When a donor's intent is not so expressed, UPMIFA directs the charity to spend an amount that is prudent, consistent with the purposes of the fund, relevant economic factors, and the donor's intent that the fund continue in perpetuity. This approach allows the charity to give effect to donor intent, protect its endowment, assure generational equity, and use the endowment to support the purposes for which the endowment was created.

**Retroactivity.** Like UMIFA, UPIA, the Uniform Principal and Income Act of 1961, and the Uniform Principal and Income Act of 1997, UPMIFA applies retroactively to institutional funds created before and prospectively to institutional funds created after enactment of the statute. Regarding the considerations motivating this treatment of the issues, see the comment to Section 4.

**Endowment Spending.** UPMIFA improves the endowment spending rule by eliminating the concept of historic dollar value and providing better guidance regarding the operation of the prudence standard. Under UMIFA a charity can spend amounts above historic dollar value that the charity determines to be prudent. The Act directs the charity to focus on the purposes and needs of the charity rather than on the purposes and perpetual nature of the fund. Amounts below historic dollar value cannot be spent. The Drafting Committee concluded that this endowment spending rule created numerous problems and that restructuring the rule would benefit charities, their donors, and the public. The problems include:

1. Historic dollar value fixes valuation at a moment in time, and that moment is arbitrary. If a donor provides for a gift in the donor's will, the date of valuation for the gift will likely be the donor's date of death. (UMIFA left uncertain what the appropriate date for valuing a testamentary gift was.) The determination of historic dollar value can vary significantly depending upon when in the market cycle the donor dies. In addition, the fund may be below historic dollar value at the time the charity receives the gift if the value of the asset declines between the date of the donor's death and the date the asset is actually distributed to the charity from the estate.

2. After a fund has been in existence for a number of years, historic dollar value may become meaningless. Assuming reasonable long term investment success, the value of the typical fund will be well above historic dollar value, and historic dollar value will no longer represent the purchasing power of the original gift. Without better guidance on spending the increase in value of the fund, historic dollar value does not provide adequate protection for the fund. If a charity views the restriction on spending simply as a direction to preserve historic dollar value, the charity may spend more than it should.

3. The Act does not provide clear answers to questions a charity faces when the value of an endowment fund drops below historic dollar value. A fund that is so encumbered is commonly called an "underwater" fund. Conflicting advice regarding whether an organization could spend from an underwater fund has led to difficulties for those managing charities. If a charity concluded that it could continue to spend trust accounting income until a fund regained its historic dollar value, the charity might



invest for income rather than on a total-return basis. Thus, the historic dollar value rule can cause inappropriate distortions in investment policy and can ultimately lead to a decline in a fund's real value. If, instead, a charity with an underwater fund continues to invest for growth, the charity may be unable to spend anything from an underwater endowment fund for several years. The inability of a charity to spend anything from an endowment is likely to be contrary to donor intent, which is to provide current benefits to the charity.

The Drafting Committee concluded that providing clearly articulated guidance on the prudence rule for spending from an endowment fund, with emphasis on the permanent nature of the fund, would provide the best protection of the purchasing power of endowment funds.

**Presumption of Imprudence.** UPMIFA includes as an optional provision a presumption of imprudence if a charity spends more than seven percent of an endowment fund in any one year. The presumption is meant to protect against spending an endowment too quickly. Although the Drafting Committee believes that the prudence standard of UPMIFA provides appropriate and adequate protection for endowments, the Committee provided the option for states that want to include a mechanical guideline in the statute. A major drawback to any statutory percentage is that it is unresponsive to changes in the rate of inflation or deflation.

**Modification of Restrictions on Charitable Funds.** UPMIFA clarifies that the doctrines of cy pres and deviation apply to funds held by nonprofit corporations as well as to funds held by charitable trusts. Courts have applied trust law rules to nonprofit corporations in the past, but the Drafting Committee believed that statutory authority for applying these principles to nonprofit corporations would be helpful. UPMIFA permitted release of restrictions but left the application of cy pres uncertain. Under UPMIFA, as under trust law, the court will determine whether and how to apply cy pres or deviation and the attorney general will receive notice and have the opportunity to participate in the proceeding. The one addition to existing law is that UPMIFA gives a charity the authority to modify a restriction on a fund that is both old and small. For these funds, the expense of a trip to court will often be prohibitive. By permitting a charity to make an appropriate modification, money is saved for the charitable purposes of the charity. Even with respect to small, old funds, however, the charity must

notify the attorney general of the charity's intended action. Of course, if the attorney general has concerns, he or she can seek the agreement of the charity to change or abandon the modification, and if that fails, can commence a court action to enjoin it. Thus, in all types of modification the attorney general continues to be the protector both of the donor's intent and of the public's interest in charitable funds.

**Other Organizational Law.** For matters not governed by UPMIFA, a charitable organization will continue to be governed by rules applicable to charitable trusts, if it is organized as a trust, or rules applicable to nonprofit corporations, if it is organized as a nonprofit corporation.

**Relation to Trust Law.** Although UPMIFA applies a number of rules from trust law to institutions organized as nonprofit corporations, in two respects UPMIFA creates rules that do not exist under the common law applicable to trusts. The endowment spending rule of Section 4 and the provision for modifying a small, old fund in subsection (d) of Section 6 have no counterparts in the common law or the UTC. The Drafting Committee believes that these rules could be useful to charities organized as trusts, and the Committee recommends conforming amendments to the UTC and the Principal and Income Act to incorporate these changes into trust law.

**33-5001. Short title.** — This chapter shall be known and may be cited as the “Uniform Prudent Management of Institutional Funds Act.”

**History.**

**I.C., § 33-5001**, as added by 2007, ch. 173, § 2, p. 512.

**STATUTORY NOTES**

**Prior Laws.**

Former chapter 50 of Title 33, which comprised the following sections, was repealed by S.L. 2007, ch. 173, § 1.

33-5001. Definitions. [**I.C., § 33-5001**, as added by 1996, ch. 405, § 1, p. 1345.]

33-5002. Appropriation of appreciation. [**I.C., § 33-5002**, as added by 1996, ch. 405, § 1, p. 1345.]

33-5003. Rule of construction. [**I.C., § 33-5003**, as added by 1996, ch. 405, § 1, p. 1345.]

33-5004. Investment of authority. [**I.C., § 33-5004**, as added by 1996, ch. 405, § 1, p. 1345.]

33-5005. Delegation of investment management. [**I.C., § 33-5005**, as added by 1996, ch. 405, § 1, p. 1345.]

33-5006. Standard of conduct. [**I.C., § 33-5006**, as added by 1996, ch. 405, § 1, p. 1345.]

33-5007. Release of restrictions on use or investment. [**I.C., § 33-5007**, as added by 1996, ch. 405, § 1, p. 1345.]

33-5008. Short title. [**I.C., § 33-5008**, as added by 1996, ch. 405, § 1, p. 1345.]

**33-5002. Definitions.** — In this chapter:

(1) “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) “Endowment fund” means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use nor endowment funds managed pursuant to chapter 7, title 57, Idaho Code.

(3) “Gift instrument” means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) “Institution” means:

(a) A person, other than an individual, organized and operated exclusively for charitable purposes;

(b) A government or governmental subdivision, agency or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(c) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) “Institutional fund” means a fund held by an institution exclusively for charitable purposes. The term does not include:

(a) Program related assets;

(b) A fund held for an institution by a trustee that is not an institution; or

(c) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(7) “Program related asset” means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

### **History.**

I.C., § 33-5002, as added by 2007, ch. 173, § 2, p. 512.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-5002 was repealed. See Prior Laws, § 33-5001.

## **OFFICIAL COMMENT**

**Subsection (1). Charitable Purpose.** The definition of charitable purpose follows that of UTC § 405 and Restatement (Third) of Trusts § 28 (2003). This long-familiar standard derives from the English Statute of Charitable Uses, enacted in 1601.

Some 17 states have created statutory definitions of charitable purpose for various purposes. *See, e.g.,* 10 PA. CONS. STAT. § 162.3 (2005) (defining charitable purpose within the Solicitation of Funds for Charitable Purposes Act to include “humane,” “patriotic,” “social welfare and advocacy,” and “civic” purposes). The definition in subsection (1) applies for purposes of this Act and does not affect other definitions of charitable purpose.

**Subsection (2). Endowment Fund.** An endowment fund is an institutional fund or a part of an institutional fund that is not wholly expendable by the institution on a current basis. A restriction that makes a fund an endowment fund arises from the terms of a gift instrument. If an

institution has more than one endowment fund, under Section 3 [§ 33-5003] the institution can manage and invest some or all endowment funds together. Section 4 and Section 6 [§ 33-5004 and § 33-5006] must be applied to individual funds and cannot be applied to a group of funds that may be managed collectively for investment purposes.

Board-designated funds are institutional funds but not endowment funds. The rules on expenditures and modification of restrictions in this Act do not apply to restrictions that an institution places on an otherwise unrestricted fund that the institution holds for its own benefit. The institution may be able to change these restrictions itself, subject to internal rules and to the fiduciary duties that apply to those that manage the institution.

If an institution transfers assets to another institution, subject to the restriction that the other institution hold the assets as an endowment, then the second institution will hold the assets as an endowment fund.

**Subsection (3). Gift Instrument.** The term gift instrument refers to the records that establish the terms of a gift and may consist of more than one document. The definition clarifies that the only legally binding restrictions on a gift are the terms set forth in writing.

As used in this definition, “record” is an expansive concept and means a writing in any form, including electronic. The term includes a will, deed, grant, conveyance, agreement, or memorandum, and also includes writings that do not have a donative purpose. For example, under some circumstances the bylaws of the institution, minutes of the board of directors, or canceled checks could be a gift instrument or be one of several records constituting a gift instrument. Although the term can include any of these records, a record will only become a gift instrument if both the donor and the institution were or should have been aware of its terms when the donor made the gift. For example, if a donor sends a contribution to an institution for its general purposes, then the articles of incorporation may be used to clarify those purposes. If, in contrast, the donor sends a letter explaining that the institution should use the contribution for its “educational projects concerning teenage depression,” then any funds received in response must be used for that purpose and not for broader purposes otherwise permissible under the articles of incorporation.

Solicitation materials may constitute a gift instrument. For example, a solicitation that suggests in writing that any gifts received pursuant to the solicitation will be held as an endowment may be integrated with other writings and may be considered part of the gift instrument. Whether the terms of the solicitation become part of the gift instrument will depend upon the circumstances, including whether a subsequent writing superseded the terms of the solicitation. Each gift received in response to a solicitation will be subject to any restrictions indicated in the gift instrument pertaining to that gift. For example, if an initial gift establishes an endowment fund, and the charity then solicits additional gifts “to be held as part of the Charity X Endowment Fund,” those additional gifts will each be subject to the restriction that the gifts be held as part of that endowment fund.

The term gift instrument includes matching funds provided by an employer or some other person. Whether matching funds are treated as part of the endowment fund or otherwise will depend on the terms of the matching gift.

The term gift instrument also includes an appropriation by a legislature or other public or governmental body for the benefit of an institution.

**Subsection (4). Institution.** The Act applies generally to institutions organized and operated exclusively for charitable purposes. The term includes charitable organizations created as nonprofit corporations, unincorporated associations, governmental subdivisions or agencies, or any form of entity, however organized, that is organized and operated exclusively for charitable purposes. The term includes a trust organized and operated exclusively for charitable purposes, but only if a charity acts as trustee. This approach leaves unchanged the coverage of UMIFA. The exclusion of “individual” from the definition of institution is not intended to exclude a corporation sole.

Although UPMIFA does not apply to all charitable trusts, many of UPMIFA’s provisions derive from trust law. Prudent investor standards apply to trustees of charitable trusts in states that have adopted UPIA. Trustees of charitable trusts can use the doctrines of *cy pres* and deviation to modify trust provisions, and the UTC includes a number of modification provisions. The Uniform Principal and Income Act permits allocation between principal and income to facilitate total-return investing. Charitable

trusts not included in UPMIFA, primarily those managed by corporate trustees and individuals, will lose the benefits of UPMIFA's endowment spending rule and the provision permitting a charity to apply cy pres, without court supervision, for modifications to a small, old fund. Enacting jurisdictions may choose to incorporate these rules into existing trust statutes to provide the benefits to charitable funds managed by corporate trustees.

The definition of institution includes governmental organizations that hold funds exclusively for the purposes listed in the definition. A governmental entity created by state law may fall outside the definition on account of the form of organization under which the state created it. Because state arrangements are so varied, creating a definition that encompasses all charitable entities created by states is not feasible. States should consider applying the core principles of UPMIFA to such governmental institutions. For example, the control over a state university may be held by a State Board of Regents. In that situation, the state may have created a governing structure by statute or in the state constitution so that the university is, in effect, privately chartered. The Drafting Committee does not intend to exclude these universities from the definition of institution, but additional state legislation may be necessary to address particular situations.

**Subsection (5). Institutional Fund.** The term institutional fund includes any fund held by an institution for charitable purposes, whether the fund is expendable currently or subject to restrictions. The term does not include a fund held by a trustee that is not an institution.

Some institutions combine assets from multiple funds for investment purposes, and some institutions invest funds from different institutions in a common fund. Typically each fund is assigned units representing the share value of the individual fund. The assets are invested collectively, permitting more efficient investment and improved diversification of the overall portfolio. The collective fund makes annual distributions to the individual funds based on the units held by each fund. For purposes of Section 3 [§ 33-5003] (and Section 5 [§ 33-5005]), the collective fund is considered one institutional fund. Section 4 and Section 6 [§ 33-5004 and § 33-5006] apply to each fund individually and not to the collective fund.



Assets held by an institution primarily for program-related purposes rather than exclusively for investment are not subject to UPMIFA. For example, a university may purchase land adjacent to its campus for future development. The purchase might not meet prudent investor standards for commercial real estate, but the purchase may be appropriate because the university needs to build a new dormitory. The classroom buildings, administration buildings, and dormitories held by the university all have value as property, but the university does not hold those buildings as financial assets for investment purposes. The Act excludes from the prudent investor norms those assets that a charity uses to conduct its charitable activities, but does not exclude assets that have a tangential tie to the charitable purpose of the institution but are held primarily for investment purposes.

A fund held by an institution is not an institutional fund if any beneficiary of the fund is not an institution. For example, a charitable remainder trust held by a charity as trustee for the benefit of the donor during the donor's lifetime, with the remainder interest held by the charity, is not an institutional fund. However, this subsection treats as an institution a charitable remainder trust that continues to operate for charitable purposes after the termination of the noncharitable interests. The Act will have only a limited effect on a charitable remainder trust that terminates after the noncharitable interest ends. During the period required to complete the distribution of the trust's property, the prudence norm will apply to the actions of the trustee, but the short timeframe will affect investment decision making.

**Subsection (6). Person.** The Act uses as the definition of person the definition approved by the National Conference of Commissioners on Uniform State Laws. The definition of institution uses the term person, but to be an institution a person must be organized and operated exclusively for charitable purposes. A person with a commercial purpose cannot be an institution. Thus, although the definition of person includes "business trust" and "any other. .. commercial entity," the Act does not apply to an entity organized for business purposes and not exclusively for charitable purposes. Further, the definition of person includes trusts, but only trusts managed by charities can be institutional funds. UPMIFA does not apply to trusts managed by corporate trustees or by individual trustees.

If a governing instrument provides that a fund will revert to the donor if, and only if, the institution ceases to exist or the purposes of the fund fail, then the fund will be considered an institutional fund until such contingency occurs.

**Subsection (7). Program-Related Asset.** Although UPMIFA does not apply to program-related assets, if program-related assets serve, in part, as investments for an institution, then the institution should identify categories for reporting those investments and should establish investment criteria for the investments that are reasonably related to achieving the institution's charitable purposes. For example, a program providing below-market loans to inner-city businesses may be "primarily to accomplish a charitable purpose of the institution" but also can be considered, in part, an investment. The institution should create reasonable credit standards and other guidelines for the program to increase the likelihood that the loans will be repaid.

**Subsection (8). Record.** This definition was added to clarify that the definition of instrument includes electronic records as defined in Section 2(8) of the Uniform Electronic Transactions Act (1999).

**33-5003. Standard of conduct in managing and investing institutional fund.** — (1) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(2) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In managing and investing an institutional fund, an institution:

(a) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(b) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) An institution may pool two (2) or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by a gift instrument, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(i) General economic conditions;

(ii) The possible effect of inflation or deflation;

(iii) The expected tax consequences, if any, of investment decisions or strategies;

(iv) The role that each investment or course of action plays within the overall investment portfolio of the fund;

- (v) The expected total return from income and the appreciation of investments;
  - (vi) Other resources of the institution;
  - (vii) The needs of the institution and the fund to make distributions and to preserve capital; and
  - (viii) An asset's special relationship or special value, if any, to the charitable purposes of the institution.
- (b) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.
- (c) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.
- (d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.
- (e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms and distribution requirements of the institution or necessary to meet other circumstances of the institution and the requirements of this chapter.
- (f) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

### **History.**

I.C., § 33-5003, as added by 2007, ch. 173, § 2, p. 512.

### **STATUTORY NOTES**

## Prior Laws.

Former § 33-5003 was repealed. See Prior Laws, § 33-5001.

## OFFICIAL COMMENT

**Purpose and Scope of Revisions.** This section adopts the prudence standard for investment decision making. The section directs directors or others responsible for managing and investing the funds of an institution to act as a prudent investor would, using a portfolio approach in making investments and considering the risk and return objectives of the fund. The section lists the factors that commonly bear on decisions in fiduciary investing and incorporates the duty to diversify investments absent a conclusion that special circumstances make a decision not to diversify reasonable. Thus, the section follows modern portfolio theory for investment decision making. Section 3 [this section] applies to all funds held by an institution, regardless of whether the institution obtained the funds by gift or otherwise and regardless of whether the funds are restricted.

The Drafting Committee discussed extensively the standard that should govern nonprofit managers. UMIFA states the standard as “ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision.” Since the decision in *Stern v. Lucy Webb Hayes National Training School for Deaconesses*, 381 F. Supp. 1003 (1974), the trend has been to hold directors of nonprofit corporations to a standard nominally similar to the corporate standard but with the recognition that the facts and circumstances considered include the fact that the entity is a charity and not a business corporation.

The language of the prudence standard adopted in UPMIFA is derived from the RMNCA and from the prudent investor rule of UPIA. The standard is consistent with the business judgment standard under corporate law, *as applied to charitable institutions*. That is, a manager operating a charitable organization under the business judgment rule would look to the same factors as those identified by the prudent investor rule. The standard for prudent investment set forth in Section 3 [this section] first states the duty of care as articulated in the RMNCA, but provides more specific guidance for those managing and investing institutional funds by incorporating language from UPIA. The criteria derived from UPIA are

consistent with good practice under current law applicable to nonprofit corporations.

Trust law norms already inform managers of nonprofit corporations. The Preamble to UPIA explains: “Although the Uniform Prudent Investor Act by its terms applies to trusts and not to charitable corporations, the standards of the Act can be expected to inform the investment responsibilities of directors and officers of charitable corporations.” *See also*, Restatement (Third) of Trusts: Prudent Investor Rule § 379, Comment b, at 190 (1992) (stating that “absent a contrary statute or other provision, the prudent investor rule applies to investment of funds held for charitable corporations.”). Trust precedents have routinely been found to be helpful but not binding authority in corporate cases.

The Drafting Committee decided that by adopting language from both the RMNCA and UPIA, UPMIFA could clarify that common standards of prudent investing apply to all charitable institutions. Although the principal trust authorities, UPIA § (2)(a), Restatement (Third) of Trusts § 337, UTC § 804, and Restatement (Second) of Trusts § 174 (prudent administration) use the phrase “care, skill and caution,” the Drafting Committee decided to use the more familiar corporate formulation as found in RMNCA. The standard also appears in Sections 3, 4 and 5 of UPMIFA. The Drafting Committee does not intend any substantive change to the UPIA standard and believes that “reasonable care, skill, and caution” are implicit in the term “care” as used in the RMNCA. The Drafting Committee included the detailed provisions from UPIA, because the Committee believed that the greater precision of the prudence norms of the Restatement and UPIA, as compared with UMIFA, could helpfully inform managers of charitable institutions. For an explanation of the Prudent Investor Act, see John H. Langbein, *The Uniform Prudent Investor Act and the Future of Trust Investing*, 81 Iowa L. Rev. 641 (1996), and for a discussion of the effect UPIA has had on investment decision making, see Max M. Schanzenbach & Robert H. Sitkoff, *Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation?*, 50 J. L. & Econ. (forthcoming 2007).

Section 3 [this section] has incorporated the provisions of UPIA with only a few exceptions. UPIA applies to private trusts and is entirely default law. The settlor of a private trust has complete control over virtually all trust provisions. See UTC § 105. Because UPMIFA applies to charitable

organizations, UPMIFA makes the duty of care, the duty to minimize costs, and the duty to investigate mandatory. The duty of loyalty is mandatory under applicable organization law, corporate or trust. Other than these duties, the provisions of Section 3 [this section] are default rules. A gift instrument or the governing instruments of an institution can modify these duties, but the charitable purpose doctrine limits the extent to which an institution or a donor can restrict these duties. In addition, subsection (a) [(1)] of Section 3 [this section] reminds the decision maker that the intent of a donor expressed in a gift instrument will control decision making. Further, the decision maker must consider the charitable purposes of the institution and the purposes of the institutional fund for which decisions are being made. These factors are specific to charitable organizations; UPIA § 2(a) states the duty to consider similar factors in the private trust context.

UPMIFA does not include the duty of impartiality, stated in UPIA § 6, because nonprofit corporations do not confront the multiple beneficiaries problem to which the duty is addressed. Under UPIA, a trustee must treat the current beneficiaries and the remainder beneficiaries with due regard to their respective interests, subject to alternative direction from the trust document. A nonprofit corporation typically creates one charity. The institution may serve multiple beneficiaries, but those beneficiaries do not have enforceable rights in the institution in the same way that beneficiaries of a private trust do. Of course, if a charitable trust is created to benefit more than one charity, rather than being created to carry out a charitable purpose, then UPIA will apply the duty of impartiality to that trust.

In other respects, the Drafting Committee made changes to language from UPIA only where necessary to adapt the language for charitable institutions. No material differences are intended. Subsection (e)(1)(D) [(5)(a)(iv)] of Section 3 of UPMIFA does not include a clause that appears at the end of UPIA § 2(c)(4) (“which may include financial assets, interest in closely held enterprises, tangible and intangible personal property, and real property.”). The Drafting Committee deemed this clause unnecessary for charitable institutions. The language of subsection (e)(1)(G) [(5)(a)(vii)] reflects a modification of the language of UPIA § (2)(c)(7). Other minor modifications to the UPIA provisions make the language more appropriate for charitable institutions.

The duties imposed by this section apply to those who govern an institution, including directors and trustees, and to those to whom the directors or managers delegate responsibility for investment and management of institutional funds. The standard applies to officers and employees of an institution and to agents who invest and manage institutional funds. Volunteers who work with an institution will be subject to the duties imposed here, but state and federal statutes may provide reduced liability for persons who act without compensation. UPMIFA does not affect the application of those shield statutes.

**Subsection (a) [(1)]. Donor Intent and Charitable Purposes.** Subsection (a) [(1)] states the overarching duty to comply with donor intent as expressed in the terms of the gift instrument. The emphasis in the Act on giving effect to donor intent does not mean that the donor can or should control the management of the institution. The other fundamental duty is the duty to consider the charitable purposes of the institution and of the institutional fund in making management and investment decisions. UPIA § 2(a) states a similar duty to consider the purposes of a trust in investing and managing assets of a trust.

**Subsection (b) [(2)]. Duty of Loyalty.** Subsection (b) [(2)] reminds those managing and investing institutional funds that the duty of loyalty will apply to their actions, but Section 3 [this section] does not state the loyalty standard that applies. The Drafting Committee was concerned, at least nominally, that different standards of loyalty may apply to directors of nonprofit corporations and to trustees of charitable trusts. The RMNCA provides that under the duty of loyalty a director of a nonprofit corporation should act “in a manner the director reasonably believes to be in the best interests of the corporation.” RMNCA § 8.30. The trust law articulation of the loyalty standard uses “sole interests” rather than “best interests.” As the Restatement of Trusts explains, “[t]he trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary.” Restatement (Second) of Trusts § 170 (1). Although the standards for loyalty, like the standard of care, are merging, *see* Evelyn Brody, *Charitable Governance: What’s Trust Law Got to do With It?* Chi.-Kent L. Rev. (2005); John H. Langbein, *Questioning the Trust Law Duty of Loyalty: Sole Interest or Best Interest*, 114 Yale L.J. 929 (2005), the Drafting Committee concluded that formulating a duty of loyalty provision for UPMIFA was



unnecessary. Thus the duty of loyalty under nonprofit corporation law will apply to charities organized as nonprofit corporations, and the duty of loyalty under trust law will apply to charitable trusts.

**Subsection (b) [(2)]. Duty of Care.** Subsection (b) [(2)] also applies the duty of care to performance of investment duties. The language derives from § 8.30 of the RMNCA. This subsection states the duty to act in good faith, “with the care an ordinarily prudent person in a like position would exercise under similar circumstances.” Although the language in the RMNCA and in UPMIFA is similar to that of § 8.30 of the Model Business Corporation Act (3d ed. 2002), the standard as applied to persons making decisions for charities is informed by the fact that the institution is a charity and not a business corporation. Thus, in UPMIFA the references to “like position” and “similar circumstances” mean that the charitable nature of the institution affects the decision making of a prudent person acting under the standard set forth in subsection (b) [(2)]. The duty of care involves considering the factors set forth in subsection (e)(1) [(5)(a)].

**Subsection (c)(1) [(3)(a)]. Duty to Minimize Costs.** Subsection (c)(1) [(3)(a)] tracks the language of UPIA § 7 and requires an institution to minimize costs. An institution may prudently incur costs by hiring an investment advisor, but the costs incurred should be appropriate under the circumstances. *See* UPIA § 7 cmt; Restatement (Third) of Trusts: Prudent Investor Rule § 227, cmt. M, at 58 (1992); Restatement (Second) of Trusts § 188 (1959). The duty is consistent with the duty to act prudently under § 8.30 of the RMNCA.

**Subsection (c)(2) [(3)(b)]. Duty to Investigate.** This subsection incorporates the traditional fiduciary duty to investigate, using language from UPIA § 2(d). The subsection requires persons who make investment and management decisions to investigate the accuracy of the information used in making decisions.

**Subsection (d) [(4)]. Pooling Funds.** An institution holding more than one institutional fund may find that pooling its funds for investment and management purposes will be economically beneficial. The Act permits pooling for these purposes. The prohibition against commingling no longer prevents pooling funds for investment and management purposes. *See* UPIA § 3, cmt. (duty to diversify aided by pooling); UPIA § 7, cmt.

(pooling to minimize costs); Restatement (Third) of Trusts: Duty to Segregate and Identify Trust Property § 84 (T.D. No. 4 2005). Funds will be considered individually for other purposes of the Act, including for the spending rule for endowment funds of Section 4 and the modification rules of Section 6.

**Subsection (e)(1) [(5)(a)]. Prudent Decision Making.** Subsection (e)(1) [(5)(a)] takes much of its language from UPIA § 2(c). In making decisions about whether to acquire or retain an asset, the institution should consider the institution's mission, its current programs, and the desire to cultivate additional donations from a donor, in addition to factors related more directly to the asset's potential as an investment.

Subsection (e)(1)(C) [(5)(a)(iii)] reflects the fact that some organizations will invest in taxable investments that may generate unrelated business taxable income for income tax purposes.

Assets held primarily for program-related purposes are not subject to UPMIFA. The management of those assets will continue to be governed by other laws applicable to the institution. Other assets may not be held primarily for program-related purposes but may have both investment purposes and program-related purposes. Subsections (a) and (e)(1)(H) [(1) and (5)(a)(viii)] indicate that a prudent decision maker can take into consideration the relationship between an investment and the purposes of the institution and of the institutional fund in making an investment that may have a program-related purpose but not be primarily program-related. The degree to which an institution uses an asset to accomplish a charitable purpose will affect the weight given that factor in a decision to acquire or retain the asset.

**Subsection (e)(2) [(5)(b)]. Portfolio Approach.** This subsection reflects the use of portfolio theory in modern investment practice. The language comes from UPIA § 2(b), which follows the articulation of the prudent investor standard in Restatement (Third) of Trusts: Prudent Investor Rule § 227(a) (1992).

**Subsection (e)(3) [(5)(c)]. Broad Investment Authority.** Consistent with the portfolio theory of investment, this subsection permits a broad range of investments. The language derives from UPIA § 2(e).

Section 4 of UMIFA indicated that an institution could invest “without restriction to investments a fiduciary may make.” The committee removed this language from subsection (e)(3) [(5)(c)] as unnecessary, because states no longer have legal lists restricting fiduciary investing to the specific types of investments identified in statutory lists.

Subsection (e)(3) [(5)(c)] also provides that other law may limit the authority under this subsection. In addition, all of subsection (e) [(5)] is subject to contrary provisions in a gift instrument, and a gift instrument may restrict the ability to invest in particular assets. For example, the gift instrument for a particular institutional fund might preclude the institution from investing the assets of the fund in companies that produce tobacco products.

In her book, *Governing Nonprofit Organizations: Federal and State Law and Regulation* 434 (Harv. Univ. Press 2004), Marion R. Fremont-Smith reports that some large charities pledge their endowment funds as security for loans. Subsection (e)(3) [(5)(c)] permits this sort of debt financing, subject to the guidelines of subsection (e)(1) [(5)(a)].

**Subsection (e)(4) [(5)(d)]. Duty to Diversify.** This subsection assumes that prudence requires diversification but permits an institution to determine that nondiversification is appropriate under exceptional circumstances. A decision not to diversify must be based on the needs of the charity and not solely for the benefit of a donor. A decision to retain property in the hope of obtaining additional contributions from the same donor may be considered made for the benefit of the charity, but the appropriateness of that decision will depend on the circumstances. This subsection derives its language from UPIA § 3. *See* UPIA § 3 cmt. (discussing the rationale for diversification); Restatement (Third) of Trusts: Prudent Investor Rule § 227 (1992).

**Subsection (e)(5) [(5)(e)]. Disposing of Unsuitable Assets.** This subsection imposes a duty on an institution to review the suitability of retaining property contributed to the institution within a reasonable period of time after the institution receives the property. Subsection (e)(5) [(5)(e)] requires the institution to make a decision but does not require a particular outcome. The institution may consider a variety of factors in making its decision, and a decision to retain the property either for a period of time or indefinitely may be a prudent decision.

Section 4(2) of UMIFA specifically authorized an institution to retain property contributed by a donor. The comment explained that an institution might retain property in the hope of obtaining additional contributions from the donor. Under UPMIFA the potential for developing additional contributions by retaining property contributed to the institution would be among the “other circumstances” that the institution might consider in deciding whether to retain or dispose of the property. The institution must weigh the potential for obtaining additional contributions with all other factors that affect the suitability of retaining the property in the investment portfolio.

The language of subsection (e)(5) [(5)(e)] comes from UPIA § 4, which restates Restatement (Third) of Trusts: Prudent Investor Rule § 229 (1992), which adopted language from Restatement (Second) of Trusts § 231 (1959). *See* UPIA § 4 cmt.

**Subsection (e)(6) [(5)(f)]. Special Skills or Expertise.** Subsection (e)(6) [(5)(f)] states the rule provided in UPIA § 2(f) requiring a trustee to use the trustee’s own skills and expertise in carrying out the trustee’s fiduciary duties. The comment to RMNCA § 8.30 describes the existence of a similar rule under the law of nonprofit corporations. Section 8.30(a)(2) provides that in discharging duties a director must act “with the care an ordinarily prudent person in a like position would exercise under similar circumstances. . . .” The comment explains that “[t]he concept of ‘under similar circumstances’ relates not only to the circumstances of the corporation but to the special background, qualifications, and management experience of the individual director and the role the director plays in the corporation.” After describing directors chosen for their ability to raise money, the comment notes that “[n]o special skill or expertise should be expected from such directors unless their background or knowledge evidences some special ability.”

The intent of subsection (e)(6) [(5)(f)] is that a person managing or investing institutional funds must use the person’s own judgment and experience, including any particular skills or expertise, in carrying out the management or investment duties. For example, if a charity names a person as a director in part because the person is a lawyer, the lawyer’s background may allow the lawyer to recognize legal issues in connection with funds held by the charity. The lawyer should identify the issues for the board, but

the lawyer is not expected to provide legal advice. A lawyer is not expected to be able to recognize every legal issue, particularly issues outside the lawyer's area of expertise, simply because the board member is lawyer. *See* ALI Principles of the Law of Nonprofit Organizations, Preliminary Draft No. 3 (May 12, 2005) § 315 (Duty of Care), cmt. c.

UMIFA contained two provisions that authorized investments in pooled or common investment funds. UMIFA §§ 4(3), 4(4). The Drafting Committee concluded that Section 3(e)(3) [(5)(c)] of UPMIFA authorizes these investments. The decision not to include the two provisions in UPMIFA implies no disapproval of such investments.

**33-5004. Appropriation for expenditure or accumulation of endowment fund — Rules of construction.** — (1) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (a) The duration and preservation of the endowment fund;
- (b) The purposes of the institution and the endowment fund;
- (c) General economic conditions;
- (d) The possible effect of inflation or deflation;
- (e) The expected total return from income and the appreciation of investments;
- (f) Other resources of the institution; and
- (g) The investment policy of the institution.

(2) Subject to the provisions of subsection (3) of this section, to limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section, a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or any general or specific direction or authorization in the gift instrument to use only “income,” “interest,” “dividends” or “rents, issues or profits,” or “to preserve the principal intact,” or words of similar import, or any direction in such gift instrument relating to measuring permitted distributions to permitted payees by reference to certain types or classes of investment returns, or allocation in such gift instrument of certain types or classes of returns to income or principal:

- (a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
- (b) Do not limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section.

**History.**

I.C., § 33-5004, as added by 2007, ch. 173, § 2, p. 512; am. 2012, ch. 146, § 1, p. 416.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-5004 was repealed. See Prior Laws, § 33-5001.

**Amendments.**

The 2012 amendment, by ch. 146, added “Subject to the provisions of subsection (3) of this section” at the beginning of subsection (2); and, in subsection (3), added “any general or specific” and “or any direction in such gift instrument relating to measuring permitted distributions to permitted payees by reference to certain types or classes of investment returns, or allocation in such gift instrument of certain types or classes of returns to income or principal” in the introductory paragraph and deleted “otherwise” preceding “limit” in paragraph (b).

**OFFICIAL COMMENT**

**Purpose and Scope of Revisions.** This section revises the provision in UMIFA that permitted the expenditure of appreciation of an endowment fund to the extent the fund had appreciated in value above the fund’s historic dollar value. UMIFA defined historic dollar value to mean all contributions to the fund, valued at the time of contribution. Instead of using historic dollar value as a limitation, UPMIFA applies a more carefully articulated prudence standard to the process of making decisions about expenditures from an endowment fund. The expenditure rule of Section 4 [this section] applies only to the extent that a donor and an institution have not reached some other agreement about spending from an endowment. If a

gift instrument sets forth specific requirements for spending, then the charity must comply with those requirements. However, if the gift instrument uses more general language, for example directing the charity to “hold the fund as an endowment” or “retain principal and spend income,” then Section 4 [this section] provides a rule of construction to guide the charity.

Prior to the promulgation of UMIFA, “income” for trust accounting purposes meant interest and dividends but not capital gains, whether or not realized. Many institutions assumed that trust accounting principles applied to charities organized as nonprofit corporations, and the rules limited the institutions’ ability to invest their endowment funds effectively. UMIFA addressed this problem by construing “income” in gift instruments to include a prudent amount of capital gains, both realized and unrealized. Under UMIFA an institution could spend appreciation in addition to spending income determined under trust accounting rules. This rule of construction likely carried out the intent of the donor better than a rule limiting spending to trust accounting income, while permitting the charity to invest in a manner that could generate better returns for the fund.

UPMIFA also applies a rule of construction to terms like “income” or “endowment.” The assumption in the Act is that a donor who uses one of these terms intends to create a fund that will generate sufficient gains to be able to make ongoing distributions from the fund while at the same time preserving the purchasing power of the fund. Because historic dollar value under UMIFA was a number fixed in time, the use of that approach may not have adequately captured the intent of a donor who wanted the endowment fund to continue to maintain its value in current dollars. UPMIFA takes a different approach, directing the institution to determine spending based on the total assets of the endowment fund rather than determining spending by adding a prudent amount of appreciation to trust accounting income.

UPMIFA requires the persons making spending decisions for an endowment fund to focus on the purposes of the endowment fund as opposed to the purposes of the institution more generally, as was the case under UMIFA. When the institution considers the purposes and duration of the fund, the institution will give priority to the donor’s general intent that the fund be maintained permanently. Although the Act does not require that a specific amount be set aside as “principal,” the Act assumes that the



charity will act to preserve “principal” (i.e., to maintain the purchasing power of the amounts contributed to the fund) while spending “income” (i.e. making a distribution each year that represents a reasonable spending rate, given investment performance and general economic conditions). Thus, an institution should monitor principal in an accounting sense, identifying the original value of the fund (the historic dollar value) and the increases in value necessary to maintain the purchasing power of the fund.

**Subsection (a) [(1)]. Expenditure of Endowment Funds.** Subsection (a) [(1)] uses the RMNCA articulation of the standard of care for decision making under Section 4 [this section]. The change in language does not reflect a substantive change. The comment to Section 3 [§ 33-5003] more fully describes that standard of care.

Section 4 [this section] permits expenditures from an endowment fund to the extent the institution determines that the expenditures are prudent after considering the factors listed in subsection (a). These factors emphasize the importance of the intent of the donor, as expressed in a gift instrument. Section 4 [this section] looks to written documents as evidence of donor’s intent and does not require an institution to rely on oral expressions of intent. By requiring written evidence of intent, the Act protects reliance by the donor and the institution on the written terms of a donative agreement. Informal conversations may be misremembered and may be subject to multiple interpretations. Of course, oral expressions of intent may guide an institution in further carrying out a donor’s wishes and in understanding a donor’s intent.

The factors in subsection (a) [(1)] require attention to the purposes of the institution and the endowment fund, economic conditions, and present and reasonably anticipated resources of the institution. As under UMIFA, determinations under Section 4 [this section] do not depend on the characterization of assets as income or principal and are not limited to the amount of income and unrealized appreciation. The authority in Section 4 [this section] is permissive, however, and an institution organized as a trust may continue to make spending decisions under trust accounting principles so long as doing so is prudent.

Institutions have operated effectively under UMIFA and have operated more conservatively than the historic dollar value rule would have

permitted. Institutions have little incentive to maximize allowable spending. Good practice has been to provide for modest expenditures while maintaining the purchasing power of a fund. Institutions have followed this practice even though UMIFA (1) does not require an institution to maintain a fund's purchasing power and (2) does allow an institution to spend any amounts in a fund above historic dollar value, subject to the prudence standard. The Drafting Committee concluded that eliminating historic dollar value and providing institutions with more discretion would not lead to depletion of endowment funds. Instead, UPMIFA should encourage institutions to establish a spending policy that will be responsive to short-term fluctuations in the value of the fund. Section 4 [this section] allows an institution to maintain appropriate levels of expenditures in times of economic downturn or economic strength. In some years, accumulation rather than spending will be prudent, and in other years an institution may appropriately make expenditures even if a fund has not generated investment return that year.

Several levels of safeguard exist to prevent an institution from depleting an endowment fund or diverting assets from the purposes for which the fund was created. In comparison with UMIFA, UPMIFA provides greater direction to the institution with respect to making a prudent determination about spending from an endowment. UMIFA told the decision maker to consider "long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions." UPMIFA clarifies that in making spending decisions the institution should attempt to ensure that the value of the fund endures while still providing that some amounts be spent for the purposes of the endowment fund. In UPMIFA prudent decision making emphasizes the endowment aspect of the fund, rather than the overall purposes or needs of the institution.

In addition to the guidance provided by Section 4 [this section], other safeguards exist. Donors can restrict gifts and can provide specific instructions to donee institutions regarding appropriate uses for assets contributed. Within institutions, fiduciary duties govern the persons making decisions on expenditures. Those persons must operate both with the best interests of the institution in mind and in keeping with the intent of donors.

If an institution diverts an institutional fund from the charitable purposes of the institution, the state attorney general can enforce the charitable interests of the public. By relying on these safeguards while providing institutions with adequate discretion to make appropriate expenditures, the Act creates a standard that takes into consideration the diversity of the charitable sector. The committee expects that accumulated experience with such spending formulas will continue to inform institutional practice under the Act.

**Distinguishing Legal and Accounting Standards.** Deleting historic dollar value does not transform any portion of an endowment fund into unrestricted assets from a legal standpoint. An endowment fund is restricted because of the donor's intent that the fund be restricted by the prudent spending rule, that the fund not be spent in the current year, and that the fund continue to maintain its value for a long time. Regardless of the treatment of endowment fund from an accounting standpoint, legally an endowment fund should not be considered unrestricted. Subsection (a) states that endowment funds will be legally restricted until the institution appropriates funds for expenditure. The UMIFA statutes in Utah and Maine contain similar language. 13 Me. Rev. Stat. Ann. tit. 13 § 4106 (West 2005); Utah Code Ann. 1953 § 13-29-3 (2005). *See, also*, advisory published by Mass. Attorney General, "The Attorney General's Position on FASB Statement of Financial Accounting Standards No. 117, ¶ 22 and Related G.L.C. 180A Issues" (January 2004) <http://www.ago.state.ma.us/filelibrary/fasb.pdf> (last visited May 22, 2006) (concerning the treatment of endowments as legally restricted assets).

The term "endowment fund" includes funds that may last in perpetuity but also funds that are created to last for a fixed term of years or until the institution achieves a specified objective. Section 4 [this section] requires the institution to consider the intended duration of the fund in making determinations about spending. For example, if a donor directs that a fund be spent over 20 years, Section 4 [this section] will guide the institution in making distribution decisions. The institution would amortize the fund over 20 years rather than try to maintain the fund in perpetuity. For an endowment fund of limited duration, spending at a rate higher than rates typically used for endowment spending will be both necessary and prudent.

**Subsection (c) [(3)]. Rule of Construction.** Donor's intent must be respected in the process of making decisions to expend endowment funds.

Section 4 [this section] does not allow an institution to convert an endowment fund into a non-endowment fund nor does the section allow the institution to ignore a donor's intent that a fund be maintained as an endowment. Rather, subsection (c) [(3)] provides rules of construction to assist institutions in interpreting donor's intent. Subsection (c) [(3)] assumes that if a donor wants an institution to spend "only the income" from a fund, the donor intends that the fund both support current expenditures and be preserved permanently. The donor is unlikely to be concerned about designation of particular returns as "income" or "principal" under accounting principles. Rather the donor is more likely to assume that the institution will use modern total-return investing techniques to generate enough funds to distribute while maintaining the long-term viability of the fund. Subsection (c) [(3)] is an intent effectuating provision that provides default rules to construe donor's intent.

As subsection (b) [(2)] explains, a donor who wants to specify particular spending guidelines can do so. For example, a donor might require that a charity spend between three and five percent of an endowed gift each year, regardless of investment performance or other factors. Because the charity agrees to the restriction in accepting the gift, the restriction will govern spending decisions by the charity. Another donor might want to limit expenditures to trust accounting income and not want the institution to be able to expend appreciation. An instruction to "pay only the income" will not be specific enough, but an instruction to "pay only interest and dividend income earned by the fund and not to make other distributions of the kind authorized by Section 4 of UPMIFA" should be sufficient. If a donor indicates that the rules on investing or expenditures under Section 4 [this section] do not apply to a particular fund, then as a practical matter the institution will probably invest the fund separately. Thus, a decision by a donor to require fund specific expenditure rules will likely also have consequences in the way the institution invests the fund.

**Retroactive Application of the Rule of Construction.** A constructional rule resolves an ambiguity, in this case, because donors use words like endowment or income without specific directions regarding the intended meaning. Changing a statutory constructional rule does not change the underlying intent, and instead changes the way an ambiguity is resolved, in

an attempt to increase the likelihood of giving effect to the intent of most donors.

If a donor has stated in a gift instrument specific directions as to spending, then the institution must respect those wishes, but many donors do not give precise instructions about how to spend endowment funds. In Section 4 [this section] UPMIFA provides guidance for giving effect to a donor's intent when the donor has not been specific. Like Section 3 of UMIFA, Section 4 [this section] of UPMIFA is a rule of construction, so it does not violate either donor intent or the Constitution.

The issue of whether to apply a rule of construction retroactively was considered in connection with UMIFA. When the New Hampshire legislature considered UMIFA, the Senate asked the New Hampshire Supreme Court for an opinion regarding whether UMIFA, if adopted, would violate a provision of the state constitution prohibiting retrospective laws, and also whether the statute would encroach on the functions of the judicial branch. The opinion answered no to both questions. [Opinion of the Justices, Request of the Senate No. 6667, 113 N.H. 287, 306 A.2d 55 \(1973\)](#).

More recently the Colorado Supreme Court considered the retroactive application of another constructional statute, one that deems the designation of a spouse as the beneficiary of a life insurance policy to be revoked in a case in which the marriage was dissolved after the naming of the spouse as beneficiary. [In re Estate of DeWitt, 54 P. 3d 849 \(Colo. 2002\)](#). In holding that retroactive application of the statute did not violate the [Contracts Clause](#), the court cited approvingly from a statement prepared by the Joint Editorial Board for Uniform Trusts and Estates Acts (JEB). JEB Statement Regarding the Constitutionality of Changes in Default Rules as Applied to PreExisting Documents, 17 Am. Coll. Tr. & Est. Couns. Notes 184 app. II (1991).

The JEB Statement explains that the purpose of the anti-retroactivity norm is to protect a transferor who relies on existing rules of law. By definition, however, rules of construction apply only in situations in which a transferor did not spell out his or her intent and hence did not rely on the then-current rule of construction. *See also In re Gardner's Trust*, [266 Minn. 127, 132, 123 N.W. 2d 69, 73 \(1963\)](#) (“[I]t is doubtful whether the testatrix had any clear intention in mind at the time the will was executed. It is

equally plausible that if she had thought about it at all she would have desired to have the dividends go where the law required them to go at the time they were received by the trustee.”) (Uniform Principal and Income Act).

Non-retroactivity would produce serious practical problems: If the Act were not retroactive, a charity would need to keep two sets of books for each endowment fund created before the enactment of UPMIFA, if new funds were added after the enactment. The burden that such a rule would impose is out of proportion to the benefit sought.

*[NOTE: Idaho did not adopt subsection (d) of section (4) of the uniform prudent management of institutional funds act.]*

**Subsection (d). Rebuttable Presumption of Imprudence.** The Drafting Committee debated at length whether to include a presumption of imprudence for spending above a fixed percentage of the value of the fund. The Drafting Committee decided to include a presumption in the Act in brackets, as an option for states to consider, and to include in these Comments a discussion of the advantages and disadvantages of including a presumption in the Act.

Some who commented on the Act viewed the presumption as linked to the retroactive application of the rule of construction of subsection (c) [(3)]. A donor who contributed to an endowment fund under UMIFA may have assumed that the historic dollar value of the gift would be subject to a no-spending rule under the statute. Because UPMIFA removes the concept of historic dollar value, the bracketed presumption of imprudence would assure the donor that spending from an endowment fund will be so limited.

Those in favor of the presumption of imprudence argued that the presumption would curb the temptation that a charity might have to spend endowment assets too rapidly. Although the presumption would be rebuttable, and spending above the identified percentage might, in some years and for some charities, be prudent, institutions would likely be reluctant to authorize spending above seven percent. In addition, the presumption would give the attorney general a benchmark of sorts.

A variety of considerations cut against including a presumption of imprudence in the statute. A fixed percentage in the statute might be

perceived as a safe harbor that could lead institutions to spend more than is prudent. Although the provision should not be read to imply that spending below seven percent will be considered prudent, some charities might interpret the statute in that way. Decision makers might be pressured to spend up to the percentage, and in doing so spend more than is prudent, without adequate review of the prudence factors as required under the Act.

Perhaps the biggest problem with including a presumption in the statute is the difficulty of picking a number that will be appropriate in view of the range of institutions and charitable purposes and the fact that economic conditions will change over time. Under recent economic conditions, a spending rate of seven percent is too high for most funds, but in a period of high inflation, seven percent might be too low. In making a prudent decision regarding how much to spend from an endowment fund, each institution must consider a variety of factors, including the particular purposes of the fund, the wishes of the donors, changing economic factors, and whether the fund will receive future donations.

Whether or not a statute includes the presumption, institutions must remember that prudence controls decision making. Each institution must make decisions on expenditures based on the circumstances of the particular charity.

**Application of Presumption.** For a state wishing to adopt a presumption of imprudence, subsection (d) provides language. Under subsection (d), a rebuttable presumption of imprudence will arise if expenditures in one year exceed seven percent of the assets of an endowment fund. The subsection applies a rolling average of three or more years in determining the value of the fund for purposes of calculating the seven-percent amount. An institution can rebut the presumption of imprudence if circumstances in a particular year make expenditures above that amount prudent. The concept and the language for the presumption of imprudence comes from [Mass. Gen. L. ch. 180A, § 2](#) (2004). Massachusetts enacted this rule in 1975 as part of its UMIFA statute. New Mexico adopted the same presumption in 1978. [N.M.S.A. § 46-9-2C](#) (2004). New Hampshire has a similar provision. [N.H. Rev. Stat. § 292-B:6](#).

The period that a charity uses to calculate the presumption (three or more years) and the frequency of valuation (at least quarterly) will be binding in

any determination of whether the presumption applies. For example, if a charity values an endowment fund on a quarterly basis and averages the quarterly values over three years to determine the fair market value of the fund for purposes calculating seven percent of the fund, the charity's choices of three years as a smoothing period and quarterly as a valuation period cannot be challenged. If the charity makes an appropriation that is less than seven percent of this value, then the presumption of imprudence does not arise even if the appropriation would exceed seven percent of the value of the fund calculated based on monthly valuations averaged over five years.

If sufficient evidence establishes, by the preponderance of the evidence, the facts necessary to raise the presumption of imprudence, then the institution will have to carry the burden of production of (i.e., the burden of going forward with) other evidence that would tend to demonstrate that its decision was prudent. The existence of the presumption does not shift the burden of persuasion to the charity.

Expenditures from an endowment fund may include distributions for charitable purposes and amounts used for the management and administration of the fund, including annual charges for fundraising. The value of a fund, as calculated for purposes of determining the seven percent amount, will reflect increases due to contributions and investment gains and decreases due to distributions and investment losses. The seven percent figure includes charges for fundraising and administrative expenses other than investment management expenses. All costs or fees associated with an endowment fund are factors that prudent decision makers consider. High costs or fees of investment management could be considered imprudent regardless of whether spending exceeds seven percent of the fund's value.

The presumption of imprudence does not create an automatic safe harbor. Expenditures at six percent might well be imprudently high. *See* James P. Garland, *The Fecundity of Endowments and Long-Duration Trusts*, *The Journal of Portfolio Management* (2005). Evidence reviewed by the Drafting Committee suggests that at present few funds can sustain spending at a rate above five percent. *See* Roger G. Ibbotson & Rex A. Sinquefeld, *Stocks, Bonds, Bills, and Inflation: Historical Returns (1926-1987)* (Research Foundation of the Institute of Chartered Financial Analysts, 1989). Indeed, under current conditions five percent can be too high. *See*



Joel C. Dobris, *Why Five? The Strange, Magnetic, and Mesmerizing Affect of the Five Percent Unitrust and Spending Rate on Settlers, Their Advisers, and Retirees*, 40 Real Prop. Prob. & Tr. J. 39 (2005). Further, spending at a lower rate, particularly in the early years of an endowment, may result in greater distributions over time. See DeMarche Associates, Inc., *Spending Policies and Investment Planning for Foundations: A Structure for Determining a Foundation's Asset Mix* (Council on Foundations: 3d ed. 1999). A presumption of imprudence can serve as a reminder that spending at too high a rate will jeopardize the long-term nature of an endowment fund. If an endowment fund is intended to continue permanently, the institution should take special care to limit annual spending to a level that protects the purchasing power of the fund.

Subsection (d) provides that the terms of the gift instrument can provide additional spending authority. For example, if a gift instrument directs that an institution expend a fund over a ten-year period, exhausting the fund after ten years, spending at a rate higher than seven percent will be necessary.

Subsection (d) does not require an institution to spend a minimum amount each year. The prudence standard and the needs of the institution will supply sufficient guidance regarding whether to accumulate rather than to spend in a particular year.

Spending above seven percent in any one year will not necessarily be imprudent. For some endowment funds fluctuating spending rates may be appropriate. Although the Act does not apply the percentage for the presumption on a rolling basis (e.g., 21 percent over three years), some endowment funds may prudently spend little or nothing in some years and more than seven percent in other years. For example, a charity planning a construction project might decide to spend nothing from an endowment for three years and then in the fourth year might spend 20 percent of the value of the fund for construction costs. The decision to accumulate in years one through three and then to spend 20 percent in the fourth year might be prudent for the charity, depending on the other factors. The charity should maintain adequate records during the accumulation period and should document the decision-making process in the fourth year to be able to meet the burden of production associated with the presumption. Another charity might prudently spend 20 percent in year one and nothing for the following

three years. That charity would also need to document the decision-making process through which the decision to spend occurred and maintain records explaining why the decision was prudent under the circumstances.

A charity might establish a “capital replacement fund” designed to provide funds to the institution for repair or replacement of major items of equipment. Disbursements from such a fund will likely fluctuate, with limited expenditures in some years and big expenditures in others. The fund would not exhibit a uniform spending rate. Indeed, an advantage of a capital replacement fund is the ability to absorb a significant capital expenditure in a single year without a negative impact on the operating budget of the institution. Disbursements might average five percent per year but would vary, with spending in some years more and in some years less. Even if this fund is an endowment fund subject to Section 4 [this section], spending above seven percent in a particular year could well be prudent. Subsection (d) does not preclude spending above seven percent.

A charity creating a capital replacement fund or a building fund might chose to adopt spending rules for the fund that would not be subject to UPMIFA. Specific donor intent can supersede the rules of UPMIFA. If the charity creates a gift instrument that establishes appropriate rules on spending for the fund, and if donors agree to those restrictions, then the UPMIFA rules on spending, including the bracketed presumption, will not apply.

**Institutions with Limited Investment and Spending Experience.** Several attorneys general and other charity officials raised concerns about whether small institutions would be able to adjust to a spending rule based solely on prudence, without the bright-line guidance of historic dollar value. Some charity regulators who spoke with the Drafting Committee noted that large institutions have sophisticated investment strategies, access to good investment advisors, and experience with spending rules that maintain purchasing power for endowment funds. For these institutions, the rules of UPMIFA should work well. For smaller institutions, however, the state regulators thought that additional guidance could be helpful. After discussing strategies to address this concern, the Drafting Committee decided to include in these comments an additional optional provision that a state could choose to include in its UPMIFA statute.

The optional provision focuses on institutions with endowment funds valued, in the aggregate, at less than \$2,000,000. The number is in brackets to indicate that it could be set higher or lower. The number was chosen to address the concern of the state regulators that some small charities might be more likely to spend imprudently than large charities. The Drafting Committee selected \$2,000,000 as the value that might include most unsophisticated institutions but would not be overinclusive.

The optional provision creates a notification requirement for an institution with a small endowment that plans to spend below historic dollar value. If an institution subject to the provision decides to appropriate an amount that would cause the value of its endowment funds to drop below the aggregate historic dollar value for all of its endowment funds, then the institution will have to notify the attorney general before proceeding with the expenditure. The provision does not require that the institution obtain the approval of the attorney general before making the distribution. Rather, the notification requirement gives the attorney general the opportunity to take a closer look at the institution and its spending decision, to educate the institution on prudent decision making for endowment funds, and to intervene if the attorney general determines that the spending would be imprudent for the institution. Although the Drafting Committee thinks that the prudence standard in UPMIFA provides adequate guidance to all institutions within the scope of the Act, if a state chooses to adopt a notification provision for institutions with small endowments, the Drafting Committee recommends the following language:

(—) If an institution has endowment funds with an aggregate value of less than [\$2,000,000], the institution shall notify the [Attorney General] at least [60 days] prior to an appropriation for expenditure of an amount that would cause the value of the institution's endowment funds to fall below the aggregate historic dollar value of the institution's endowment funds, unless the expenditure is permitted or required under law other than this [act] or in the gift instrument. For purposes of this subsection, "historic dollar value" means the aggregate value in dollars of (i) each endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time the donation is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The

institution's determination of historic dollar value made in good faith is conclusive.

**33-5005. Delegation of management and investment functions.** — (1) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(3) An institution that complies with subsection (1) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers or employees as authorized by law of this state other than this chapter.

### **History.**

I.C., § 33-5005, as added by 2007, ch. 173, § 2, p. 512.

## **STATUTORY NOTES**

## **Prior Laws.**

Former § 33-5005 was repealed. See Prior Laws, § 33-5001.

## **OFFICIAL COMMENT**

The prudent investor standard in Section 4 [§ 33-5004] presupposes the power to delegate. For some types of investment, prudence requires diversification, and diversification may best be accomplished through the use of pooled investment vehicles that entail delegation. The Drafting Committee decided to put Section 5 [this section] in brackets because many states already provide sufficient authority to delegate authority through other statutes. If such authority exists, then an enacting state should enact UPMIFA without Section 5 [this section]. Enacting delegation rules that duplicate existing rules could be confusing and might create conflicts. For charitable trusts, UPIA provides the same delegation rules as those in Section 5 [this section]. For nonprofit corporations, nonprofit corporation statutes often provide comparable rules. A state enacting UPMIFA must be certain that its laws authorize delegation, either through other statutes or by enacting Section 5 [this section].

Section 5 [this section] incorporates the delegation rule found in UPIA § 9, updating the delegation rules in UMIFA § 5. Section 5 [this section] permits the decision makers in an institution to delegate management and investment functions to external agents if the decision makers exercise reasonable skill, care, and caution in selecting the agent, defining the scope of the delegation and reviewing the performance of the agent. In some circumstances, the scope of the delegation may include redelegation. For example, an institution may select an investment manager to assist with investment decisions. The delegation may include the authority to redelegate to investment managers with expertise in particular investment areas. All decisions to delegate require the exercise of reasonable care, skill, and caution in selecting, instructing, and monitoring agents. Further, decision makers cannot delegate the authority to make decisions concerning expenditures and can only delegate management and investment functions. Subsection (c) [(3)] protects decision makers who comply with the requirement for proper delegation from liability for actions or decisions of the agents. In making decisions concerning delegation, the institution must

be mindful of Section 3(c)(1) [§ 33-5003(3)(a)] of UPMIFA, the provision that directs the institution to incur only reasonable costs in managing and investing an institutional fund.

Section 5 [this section] does not address issues of internal delegation and potential liability for internal delegation, and subsection (c) [(3)] does not affect laws that govern personal liability of directors or trustees for matters outside the scope of Section 5 [this section]. Directors will look to nonprofit corporation laws for these rules, while trustees will look to trust law. *See, e.g.,* RMNCA, § 8.30(b) (permitting directors to rely on information prepared by an officer or employee of the institution if the director reasonably believes the officer or employee to be reliable and competent in the matters presented).

The language of subsection (c) [(3)] is similar to that of UPIA § 9(c) and RMNCA § 8.30(d). The decision not to include the terms “beneficiaries” or “members” in subsection (c) [(3)] does not indicate a decision that this section does not create immunity from claims brought by beneficiaries or members. Instead, a decision maker who complies with Section 5 [this section] will be protected from any liability resulting from actions or decisions made by an external agent.

Subsection (d) [(4)] creates personal jurisdiction over the agent. This subsection is not a choice of law rule.

Subsection (e) [(5)] notes that law other than this Act governs internal delegation. Section 5 of UMIFA included internal delegation as well as external delegation, due to a concern at that time that trust law concepts might govern internal delegation in nonprofit corporations. With the widespread adoption of nonprofit corporation statutes, that concern no longer exists. The decision not to address internal delegation in UPMIFA does not suggest that a governing board of a nonprofit corporation cannot delegate to committees, officers, or employees. Rather, a nonprofit corporation must look to other law, typically a nonprofit corporation statute, for the rules governing internal delegation.

**33-5006. Release or modification of restrictions on management, investment or purpose.** — (1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

(4) If an institution determines that a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty (60) days after notification to the attorney general and the donor if available, may release or modify the restriction, in whole or part, if:

- (a) The institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars (\$25,000);



(b) More than ten (10) years have elapsed since the fund was established; and

(c) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

### **History.**

I.C., § 33-5006, as added by 2007, ch. 173, § 2, p. 512.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Prior Laws.**

Former § 33-5006 was repealed. See Prior Laws, § 33-5001.

## **OFFICIAL COMMENT**

Section 6 [this section] expands the rules on releasing or modifying restrictions that are found in Section 7 of UMIFA. Subsection (a) [(1)] restates the rule from UMIFA allowing the release of a restriction with donor consent. Subsections (b) and (c) [(2) and (3)] make clear that an institution can always ask a court to apply equitable deviation or *cy pres* to modify or release a restriction, under appropriate circumstances. Subsection (d) [(4)], a new provision, permits an institution to apply *cy pres* on its own for small funds that have existed for a substantial period of time, after giving notice to the state attorney general.

Although UMIFA stated that it did not “limit the application of the doctrine of *cy pres*”, UMIFA § 7(d), what that statement meant under the Act was unclear. UMIFA itself appeared to permit only a release of a restriction and not a modification. That all-or-nothing approach did not adequately protect donor intent. See *Yale Univ. v. Blumenthal*, 621 A.2d 1304 (Conn. 1993). By expressly including deviation and *cy pres*, UPMIFA requires an institution to seek modifications that are “in accordance with the donor’s probable intention” for deviation and “in a manner consistent with the charitable purposes expressed in the gift instrument” for *cy pres*.

**Individual Funds.** The rules on modification require that the institution, or a court applying a court-ordered doctrine, review each institutional fund separately. Although an institution may manage institutional funds collectively, for purposes of this Section each fund must be considered individually.

**Subsection (a) [(1)]. Donor Release.** Subsection (a) [(1)] permits the release of a restriction if the donor consents. A release with donor consent cannot change the charitable beneficiary of the fund. Although the donor has the power to consent to a release of a restriction, this section does not create a power in the donor that will cause a federal tax problem for the donor. The gift to the institution is a completed gift for tax purposes, the property cannot be diverted from the charitable beneficiary, and the donor cannot redirect the property to another use by the charity. The donor has no retained interest in the fund.

**Subsection (b) [(2)]. Equitable Deviation.** Subsection (b) [(2)] applies the rule of equitable deviation, adapting the language of UTC § 412 to this section. *See also* Restatement (Third) of Trusts § 66 (2003). Under the deviation doctrine, a court may modify restrictions on the way an institution manages or administers a fund in a manner that furthers the purposes of the fund. Deviation implements the donor's intent. A donor commonly has a predominating purpose for a gift and, secondarily, an intent that the purpose be carried out in a particular manner. Deviation does not alter the purpose but rather modifies the means in order to carry out the purpose.

Sometimes deviation is needed on account of circumstances unanticipated when the donor created the restriction. In other situations the restriction may impair the management or investment of the fund. Modification of the restriction may permit the institution to carry out the donor's purposes in a more effective manner. A court applying deviation should attempt to follow the donor's probable intention in deciding how to modify the restriction. Consistent with the doctrine of equitable deviation in trust law, subsection (b) [(2)] does not require an institution to notify donors of the proposed modification. Good practice dictates notifying any donors who are alive and can be located with a reasonable expenditure of time and money. Consistent with the doctrine of deviation under trust law, the institution must notify the attorney general who may choose to participate in the court proceeding. The attorney general protects donor intent as well

as the public's interest in charitable assets. Attorney general is in brackets in the Act because in some states another official enforces the law of charities.

**Subsection (c) [(3)]. *Cy Pres*.** Subsection (c) [(3)] applies the rule of *cy pres* from trust law, authorizing the court to modify the purpose of an institutional fund. The term “modify” encompasses the release of a restriction as well as an alteration of a restriction and also permits a court to order that the fund be paid to another institution. A court can apply the doctrine of *cy pres* only if the restriction in question has become unlawful, impracticable, impossible to achieve, or wasteful. This standard, which comes from UTC § 413, updates the circumstances under which *cy pres* may be applied by adding “wasteful” to the usual common law articulation of the doctrine. Any change must be made in a manner consistent with the charitable purposes expressed in the gift instrument. *See also* Restatement (Third) of Trusts § 67 (2003). Consistent with the doctrine of *cy pres*, subsection (c) [(3)] does not require an institution seeking *cy pres* to notify donors. Good practice will be to notify donors whenever possible. As with deviation, the institution must notify the attorney general who must have the opportunity to be heard in the proceeding.

**Subsection (d) [(4)]. *Modification of Small, Old Funds*.** Subsection (d) [(4)] permits an institution to release or modify a restriction according to *cy pres* principles but without court approval if the amount of the institutional fund involved is small and if the institutional fund has been in existence for more than 20 [(10) in Idaho] years. The rationale is that under some circumstances a restriction may no longer make sense but the cost of a judicial *cy pres* proceeding will be too great to warrant a change in the restriction. The Drafting Committee discussed at length the parameters for allowing an institution to apply *cy pres* without court supervision. The Committee drafted subsection (d) [(4)] to balance the needs of an institution to serve its charitable purposes efficiently with the policy of enforcing donor intent. The Committee concluded that an institutional fund with a value of \$25,000 or less is sufficiently small that the cost of a judicial proceeding will be out of proportion to its protective purpose. The Committee included a requirement that the institutional fund be in existence at least 20 [(10) in Idaho] years, as a further safeguard for fidelity to donor intent. The 20-year [10-year in Idaho] period begins to run from the date of inception of the fund and not from the date of each gift to the fund. The

amount and the number of years have been placed in brackets to signal to an enacting jurisdiction that it may wish to designate a higher or lower figure. Because the amount should reflect the cost of a judicial proceeding to obtain a modification, the number may be higher in some states and lower in others.

As under judicial *cy pres*, an institution acting under subsection (d) [(4)] must change the restriction in a manner that is in keeping with the intent of the donor and the purpose of the fund. For example, if the value of a fund is too small to justify the cost of administration of the fund as a separate fund, the term “wasteful” would allow the institution to combine the fund with another fund with similar purposes. If a fund has been created for nursing scholarships and the institution closes its nursing school, the institution might appropriately decide to use the fund for other scholarships at the institution. In using the authority granted under subsection (d) [(4)], the institution must determine which alternative use for the fund reasonably approximates the original intent of the donor. The institution cannot divert the fund to an entirely different use. For example, the fund for nursing scholarships could not be used to build a football stadium.

An institution seeking to modify a provision under subsection (d) [(4)] must notify the attorney general of the planned modification. The institution must wait 60 days before proceeding; the attorney general may take action if the proposed modification appears inappropriate.

**Notice to Donors.** The Drafting Committee decided not to require notification of donors under subsections (b), (c), and (d) [(2), (3), and (4)]. The trust law rules of equitable deviation and *cy pres* do not require donor notification and instead depend on the court and the attorney general to protect donor intent and the public’s interest in charitable assets.

With regard to subsection (d) [(4)], the Drafting Committee concluded that an institution should not be required to give notice to donors. Subsection (d) [(4)] can only be used for an old and small fund. Locating a donor who contributed to the fund more than 20 [(10) in Idaho] years earlier may be difficult and expensive. If multiple donors each gave a small amount to create a fund 20 [(10) in Idaho] years earlier, the task of locating all of those donors would be harder still. The Drafting Committee

concluded that an institution's concern for donor relations would serve as a sufficient incentive for notifying donors when donors can be located.

**33-5007. Reviewing compliance.** — Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

**History.**

I.C., § 33-5007, as added by 2007, ch. 173, § 2, p. 512.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-5007 was repealed. See Prior Laws, § 33-5001.

**33-5008. Application to existing institutional funds.** — This chapter applies to institutional funds existing on or established after July 1, 2007. As applied to institutional funds existing on July 1, 2007, this chapter governs only decisions made or actions taken on or after that date.

**History.**

I.C., § 33-5008, as added by 2007, ch. 173, § 2, p. 512.

**STATUTORY NOTES**

**Prior Laws.**

Former § 33-5008 was repealed. See Prior Laws, § 33-5001.

**33-5009. Relation to electronic signatures in global and national commerce act.** — This chapter modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. section 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. section 7003(b).

**History.**

I.C., § 33-5009, as added by 2007, ch. 173, § 2, p. 512.



**33-5010. Uniformity of application and construction.** — In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History.**

I.C., § 33-5010, as added by 2007, ch. 173, § 2, p. 512.



## **CHAPTER 51**

### **POSTSECONDARY ENROLLMENT OPTIONS**

Section.

33-5101. Purpose.

33-5102. Definitions.

33-5103. Authorization — Notification.

33-5104. Counseling.

33-5105. Dissemination of information — Notification of intent to enroll.

33-5106. Limit on participation.

33-5107. Enrollment priority.

33-5108. Courses according to agreements. [Repealed.]

33-5109. Credits.

33-5110. Financial arrangements.

**33-5101. Purpose.** — The purpose of this chapter is to promote rigorous academic pursuits and to provide a wider variety of options to high school pupils by encouraging and enabling secondary pupils to enroll full-time or part-time in nonsectarian courses or programs in eligible postsecondary institutions as defined in section 33-5102, Idaho Code.

**History.**

[I.C., § 33-5101](#), as added by 1997, ch. 283, § 1, p. 859.

**33-5102. Definitions.** — As used in this chapter:

- (1) “Course” means a course of instruction or a program of instruction.
- (2) “Dual credit” means credit awarded to a student on his or her secondary and postsecondary transcript for the completion of a single course.
- (3) “Eligible institution” means a public or private postsecondary educational institution accredited by an organization recognized by the state board of education.
- (4) “Postsecondary credit” means credit awarded to a student on his or her postsecondary transcript for the completion of a course.
- (5) “Secondary credit” means credit awarded to a student on his or her secondary transcript for the completion of a course.

**History.**

I.C., § 33-5102, as added by 1997, ch. 283, § 1, p. 859; am. 2014, ch. 27, § 1, p. 37.

## STATUTORY NOTES

**Amendments.**

The 2014 amendment, by ch. 27, inserted present subsection (2); redesignated former subsection (2) as present subsection (3); rewrote present subsection (3), which formerly read: “‘Eligible institution’ means an Idaho public postsecondary institution; a private two-year trade and technical school accredited by a reputable accrediting association; or a private, residential, two-year or four-year liberal arts, degree-granting college or university located in Idaho”; and added subsections (4) and (5).

**33-5103. Authorization — Notification.** — Notwithstanding any other law, administrative rule or local policy to the contrary, a secondary pupil enrolled in a public school may apply to an eligible institution to enroll in nonsectarian courses offered by that postsecondary institution. If an institution accepts a secondary pupil for enrollment under the provisions of this chapter, the institution shall send written notice to the pupil and the pupil's school district within ten (10) days of acceptance. The notice shall indicate the course and hours of enrollment of that pupil. If the pupil enrolls in a course for postsecondary credit, the institution shall notify the pupil about payment in the customary manner used by the institution.

**History.**

I.C., § 33-5103, as added by 1997, ch. 283, § 1, p. 859; am. 2014, ch. 27, § 2, p. 37; am. 2015, ch. 288, § 1, p. 1160.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 27, substituted “a secondary pupil” for “an eleventh or twelfth grade pupil” in the first sentence.

The 2015 amendment, by ch. 288, deleted “except a foreign exchange pupil enrolled in a district under a cultural exchange program” following “public school” in the first sentence.

**Effective Dates.**

Section 2 of S.L. 2015, ch. 288, declared an emergency. Approved April 6, 2015.

**33-5104. Counseling.** — To the extent possible, the school district shall provide counseling services to pupils and their parents or guardians before the pupil enrolls in courses under the provisions of this chapter to ensure that the pupil and parents or guardian are fully aware of the risks and possible consequences of enrolling in postsecondary courses. Counseling services shall include information on the program including who may enroll, what institutions and sources are available under this program, the decision-making process for granting academic or career technical credits, financial arrangements for tuition, books and materials, eligibility criteria for transportation aid, available support services, the need to arrange an appropriate schedule, consequences of failing or not completing a course in which the pupil enrolls, the effect of enrolling in this program on the pupil's ability to complete the required high school graduation requirements, financial aid and the academic and social responsibilities that must be assumed by the pupil and the parents or guardian. The person providing counseling shall encourage pupils and their parents or guardian to also use available counseling services at the postsecondary institutions prior to the semester of enrollment to ensure that anticipated plans are appropriate and adequate.

#### **History.**

I.C., § 33-5104, as added by 1997, ch. 283, § 1, p. 859; am. 2014, ch. 27, § 3, p. 37; am. 2017, ch. 88, § 1, p. 235.

### **STATUTORY NOTES**

#### **Amendments.**

The 2014 amendment, by ch. 27, deleted the subsection (1) designation; in the second sentence, substituted "Counseling services shall include" for "The district shall provide" at the beginning and inserted "financial aid" near the end; and deleted former subsection (2), which read: "Prior to enrolling, the pupil and the pupil's parents or guardian must sign a form that shall be provided by the school district and may be obtained from a postsecondary institution stating that they have received the information specified herein and that they understand the responsibilities that must be

assumed in enrolling in this program. The superintendent of public instruction shall, upon request, provide technical assistance to a school district in developing appropriate forms and counseling guidelines”.

The 2017 amendment, by ch. 88, inserted “or career technical” near the beginning of the second sentence.



**33-5105. Dissemination of information — Notification of intent to enroll.** — By March 1 of each year, a school district shall provide general information about the program to all secondary pupils.

**History.**

I.C., § 33-5105, as added by 1997, ch. 283, § 1, p. 859; am. 2014, ch. 27, § 4, p. 37.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 27, substituted “all secondary pupils” for “all pupils in grades ten (10) and eleven (11)” at the end of the first sentence and deleted the former second and third sentences, which read: “To assist the district in planning, a pupil shall inform the district by March 30 of each year of the pupil’s intent to enroll in post-secondary courses during the following school year. A pupil is not bound by notifying or not notifying the district by March 30”.

**33-5106. Limit on participation.** — (1) If a pupil's enrollment pursuant to this chapter decreases the pupil's instructional time in the local school district to less than four (4) hours a day, the pupil shall nevertheless be counted as in local school district instructional time for four (4) hours a day for purposes of chapter 10, title 33, Idaho Code.

(2) A pupil who has completed course requirements for graduation but who has not received a diploma may participate in the program.

(3) A pupil who has graduated from high school cannot participate in the program.

### **History.**

**I.C., § 33-5106**, as added by 1997, ch. 283, § 1, p. 859; am. 1998, ch. 165, § 1, p. 559; am. 2014, ch. 27, § 5, p. 37.

## **STATUTORY NOTES**

### **Amendments.**

The 2014 amendment, by ch. 27, deleted former subsections (1) and (2), which read: “(1) A pupil who first enrolls in grade eleven (11) may not enroll in postsecondary courses under the provisions of this chapter for secondary credit for more than the equivalent of two (2) academic years. (2) A pupil who first enrolls in grade twelve (12) may not enroll in postsecondary courses under the provisions of this chapter for secondary credit for more than the equivalent of one (1) academic year”; redesignated former subsections (3) through (5) as present subsections (1) through (3); and deleted the former first sentence in present subsection (1), which read: “A pupil may also be enrolled in courses for secondary credits approved by the local school district”.

**33-5107. Enrollment priority.** — A postsecondary institution shall give priority to its postsecondary students when enrolling secondary students in courses for secondary credit only. Once a pupil has been enrolled in a postsecondary course under the provisions of this chapter, the pupil shall not be displaced by another student.

**History.**

I.C., § 33-5107, as added by 1997, ch. 283, § 1, p. 859; am. 2014, ch. 27, § 6, p. 37.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 27, in the first sentence, substituted “enrolling secondary students in courses” for “enrolling eleventh and twelfth grade pupils in courses” and added “only” at the end.

**33-5108. Courses according to agreements. [Repealed.]**

Repealed by S.L. 2014, ch. 27, § 7, effective July 1, 2014.

**History.**

I.C., § 33-5108, as added by 1997, ch. 283, § 1, p. 859.

**33-5109. Credits.** — (1) A pupil may enroll in a course under the provisions of this chapter for secondary credit, for postsecondary credit or for dual credit. At the time a pupil enrolls in a course, the pupil shall designate the type of credit desired. A pupil taking several courses may designate some for secondary credit, some for postsecondary credit and some for dual credit.

(2) A school district shall grant academic or career technical credit, as applicable to the course, to a pupil enrolled in a course for secondary credit if the pupil successfully completes the course. Four (4) semester college credits equal at least one (1) full year (two (2) semester credits) of high school credit in that subject. Fewer college credits may be prorated.

(3) The secondary credits granted to a pupil shall be counted toward the graduation requirements and subject area requirements of the school district. Evidence of successful completion of each course and secondary credits granted shall be included in the pupil's secondary school record. A pupil shall provide the school with a copy of the pupil's grade in each course taken for secondary credit under the provisions of this chapter. Upon the request of a pupil, the pupil's secondary school record shall also include evidence of successful completion and credits granted for a course taken for postsecondary credit. In either case, the record shall indicate that the credits were earned at a postsecondary institution.

(4) If a pupil enrolls in a postsecondary institution after leaving secondary school, the postsecondary institution shall award postsecondary credit for any course successfully completed for secondary credit at that institution. Other postsecondary institutions may award, after a pupil leaves secondary school, postsecondary credit for any courses successfully completed under the provisions of this chapter. An institution shall not charge a pupil for the award of credit.

(5) Postsecondary faculty instructing a course for postsecondary, secondary or dual credit shall not be required to obtain a certificate pursuant to chapter 12, title 33, Idaho Code, nor shall the postsecondary faculty be deemed an employee of a school district for any purpose under law.

**History.**

I.C., § 33-5109, as added by 1997, ch. 283, § 1, p. 859; am. 1998, ch. 165, § 2, p. 559; am. 2017, ch. 88, § 2, p. 235.

**STATUTORY NOTES****Amendments.**

The 2017 amendment, by ch. 88, substituted “or career technical credit, as applicable to the course” for “credit” in the first sentence of subsection (2).

**33-5110. Financial arrangements.** — (1) For a pupil enrolled in a course under the provisions of this chapter, the school district may make payments or partial payments according to the provisions of this section for courses that were taken for secondary credit.

(2) The school district superintendent shall not make payments to a postsecondary institution for a course taken for postsecondary credit only. The district superintendent shall not make payments to a postsecondary institution for a course from which a student officially withdraws during the first fourteen (14) days of the semester or for courses for audit.

**History.**

I.C., § 33-5110, as added by 1997, ch. 283, § 1, p. 859.





## **CHAPTER 52**

### **PUBLIC CHARTER SCHOOLS**

#### **Section.**

33-5201. Short title.

33-5202. Legislative intent.

33-5202A. Definitions.

33-5203. Authorization — Limitations.

33-5204. Nonprofit corporation — Liability — Insurance.

33-5204A. Applicability of professional codes and standards — Limitations upon authority.

33-5205. Petition to establish public charter school.

33-5205A. Transfer of charter.

33-5205B. Performance certificates.

33-5205C. Public charter school replication.

33-5206. Requirements and prohibitions of a public charter school.

33-5207. Charter appeal procedure.

33-5208. Public charter school financial support.

33-5209. Enforcement — Revocation — Appeal. [Repealed.]

33-5209A. Accountability.

33-5209B. Charter renewals.

33-5209C. Enforcement — Revocation — Appeal.

33-5210. Application of school law — Accountability — Exemption from state rules.

33-5211. Technical support and information.

33-5212. School closure and dissolution.

33-5213. Public charter school commission.

33-5214. Public charter school authorizers fund.

33-5215. Career technical regional public charter school.

33-5216. Public postsecondary institutions — Public charter high schools.  
[Null and void.]

33-5217. Public charter school debt reserve.

33-5218. Public charter school facilities program.

**33-5201. Short title.** — This chapter shall be known and may be cited as the “Public Charter Schools Act of 1998.”

**History.**

**I.C., § 33-5201**, as added by 1998, ch. 92, § 1, p. 330.

**RESEARCH REFERENCES**

**A.L.R.** — Validity, construction, and application of statute or regulation governing charter schools. **78 A.L.R.5th 533**.

**33-5202. Legislative intent.** — It is the intent of the legislature to provide opportunities for teachers, parents, students, and community members to establish and maintain public charter schools that operate independently from the existing traditional school district structure but within the existing public school system. In order to accomplish any of the following, public charter schools shall have equal access and authority to participate in all state and federal programs to the same extent as a traditional public school, irrespective of the instructional delivery method:

(1) Improve student learning; (2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students; (3) Include the use of different and innovative teaching methods; (4) Utilize virtual distance learning and online learning; (5) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; (6) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; (7) Hold the schools established under this chapter accountable for meeting measurable student educational standards.

### **History.**

I.C., § 33-5202, as added by 1998, ch. 92, § 1, p. 330; am. 2000, ch. 443, § 1, p. 1404; am. 2001, ch. 302, § 1, p. 1101; am. 2004, ch. 371, § 1, p. 1099; am. 2019, ch. 298, § 4, p. 881.

## **STATUTORY NOTES**

### **Amendments.**

The 2019 amendment, by ch. 298, added the last sentence in the introductory paragraph.

### **Compiler's Notes.**

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is

declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**Effective Dates.**

Section 4 of S.L. 2000, ch. 443 declared an emergency. Approved April 17, 2000.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

**33-5202A. Definitions.** — As used in this chapter, unless the context requires otherwise:

- (1) “Authorized chartering entity” means any of the following:
  - (a) A local board of trustees of a school district in this state;
  - (b) The public charter school commission created pursuant to the provisions of this chapter;
  - (c) An Idaho public college, university or community college;
  - (d) A private, nonprofit, Idaho-based nonsectarian college or university that is accredited by the same organization that accredits Idaho public colleges and universities.
- (2) “Charter” means the grant of authority approved by the authorized chartering entity to the board of directors of the public charter school.
- (3) “Charter holder” means the public charter school’s board of directors to which a charter is granted pursuant to chapter 52, title 33, Idaho Code.
- (4) “Educational services provider” means a nonprofit or for-profit entity that contracts with a public charter school to provide educational services and resources including administrative support and educational design, implementation or management.
- (5) “Founder” means a person, including employees or staff of a public charter school, who makes a material contribution toward the establishment of a public charter school in accordance with criteria determined by the board of directors of the public charter school, and who is designated as such at the time the board of directors acknowledges and accepts such contribution. The criteria for determining when a person is a founder shall not discriminate against any person on any basis prohibited by the federal or state constitution or any federal, state or local law. The designation of a person as a founder, and the admission preferences available to the children of a founder, shall not constitute pecuniary benefits.
- (6) “Performance certificate” means a fixed-term, renewable certificate between a public charter school and an authorized chartering entity that

outlines the roles, powers, responsibilities and performance expectations for each party to the certificate.

(7) “Petition” means the document submitted by a person or persons to the authorized chartering entity to request the creation of a public charter school.

(8) “Career technical regional public charter school” means a public charter secondary school authorized under this chapter to provide programs in career technical education that meet the standards and qualifications established by the division of career technical education. A career technical regional public charter school may be approved by an authorized chartering entity and, by the terms of its charter, shall operate in association with at least two (2) school districts. This provision does not exclude a public charter school with a statewide boundary from applying for added cost funds authorized for career technical education, irrespective of the instructional delivery method. Participating school districts need not be contiguous.

(9) “Public charter school” means a school that is authorized under this chapter to deliver public education in Idaho with equal access and authority to participate in all state and federal programs to the same extent as a traditional public school, irrespective of the instructional delivery method.

(10) “Traditional public school” means any school existing or to be built that is operated and controlled by a school district in this state.

(11) “Virtual school” means either a public charter school or a traditional public school that delivers a full-time, sequential program of synchronous and/or asynchronous instruction primarily through the use of technology via the internet in a distributed environment. Schools classified as virtual must have an online component to their school with online lessons and tools for student and data management.

## **History.**

**I.C., § 33-5202A**, as added by 2004, ch. 371, § 2, p. 1099; am. 2005, ch. 376, § 1, p. 1201; am. 2007, ch. 246, § 1, p. 724; am. 2008, ch. 105, § 1, p. 288; am. 2012, ch. 188, § 11, p. 495; am. 2013, ch. 343, § 2, p. 908; am. 2016, ch. 25, § 35, p. 35; am. 2016, ch. 271, § 1, p. 728; am. 2017, ch. 249, § 6, p. 607; am. 2019, ch. 298, § 5, p. 881.

## STATUTORY NOTES

### Cross References.

Division of career technical education, § 33-2205.

Public charter school commission, § 33-5213.

### Amendments.

The 2007 amendment, by ch. 246, added subsection (5) and redesignated the subsequent subsections accordingly.

The 2008 amendment, by ch. 105, deleted former subsection (7), which defined “Public virtual school,” redesignated former subsection (8) as present subsection (7), and added present subsection (8).

The 2012 amendment, by ch. 188, in subsection (5), substituted “33-5205(3)(j)” for “33-5206(1)” near the end.

The 2013 amendment, by ch. 343, rewrote subsection (1), which previously read: “‘Authorized chartering entity’ means either the local board of trustees of a school district in this state, or the public charter school commission pursuant to the provisions of this chapter”; and added subsection (4) and renumbered the subsequent subsections accordingly.

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 271, added present subsections (3) and (4) and redesignated the subsequent subsections accordingly.

The 2016 amendment, by ch. 25, substituted “career technical” for “professional-technical” throughout subsection (6).

The 2017 amendment, by ch. 249, in subsection (8), deleted “Notwithstanding the provisions of [section 33-5205\(3\)\(j\), Idaho Code](#)” from the beginning of the last sentence.

The 2019 amendment, by ch. 298, added the next-to-last sentence in subsection (8); rewrote subsection (9), which formerly read: “‘Public charter school’ means a school that is authorized under this chapter to deliver public education in Idaho”; and substituted “means either a public



charter school or a traditional public school” for “means a school” near the beginning of the first sentence in subsection (11).

**Compiler’s Notes.**

Section 2 of S.L. 2004, ch. 370 also enacted a § 33-5202A, which was redesignated by the compiler as § 33-5202B and was repealed by S.L. 2005, ch. 25, § 57.

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**Effective Dates.**

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

**33-5203. Authorization — Limitations.** — (1) The creation of public charter schools is hereby authorized. Public charter schools shall be part of the state's program of public education.

(2) New public charter schools, which may begin educational instruction in any one (1) school year, shall be subject to the following:

(a) No whole school district may be converted to a charter district or any configuration that includes all schools as public charter schools; and

(b) A petition must be received by the initial authorized chartering entity no later than September 1 to be eligible to begin instruction the first complete school year following receipt of the petition, unless the authorized chartering entity agrees to a later date; and

(c) To begin operations, a newly chartered public school must be authorized by no later than January 1 of the previous school year.

(3) A public charter school may be formed either by creating a new public charter school or by replicating an existing high-performing public charter school, which charter may be approved by any authorized chartering entity, or by converting an existing traditional public school to a public charter school, which charter may only be approved by the board of trustees of the school district in which the existing public school is located.

(4) No charter shall be approved under this chapter:

(a) Which provides for the conversion of any existing private or parochial school to a public charter school.

(b) To a for-profit entity or any school that is operated by a for-profit entity, provided however, nothing herein shall prevent the board of directors of a public charter school from legally contracting with for-profit entities for the provision of products or services that aid in the operation of the school.

(c) By the board of trustees of a school district if the public charter school's physical location is outside the boundaries of the authorizing school district.

(5) A public virtual school charter may be approved by any authorized chartering entity except a local school district board of trustees. In addition, a charter may also be approved by the state board of education pursuant to [section 33-5207\(5\)\(b\), Idaho Code](#).

(6) A charter holder may not operate enterprises other than the public charter schools for which it has been authorized.

(7) The state board of education shall adopt rules, subject to law, to establish a consistent application and review process for the approval and maintenance of all public charter schools.

(8) Each public charter school authorized by an authorized chartering entity other than a local school district board of trustees is hereby designated as a local education agency (LEA) as such term is defined in [34 CFR 300.28](#). Public charter schools chartered by the board of trustees of a school district may also be designated by the board of trustees as an LEA, with the concurrence of the public charter school board of directors. Otherwise, the public charter school shall be included in that district's LEA.

### **History.**

[I.C., § 33-5203](#), as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 1, p. 623; am. 2004, ch. 371, § 3, p. 1099; am. 2005, ch. 255, § 7, p. 782; am. 2005, ch. 376, § 2, p. 1201; am. 2006, ch. 16, § 4, p. 42; am. 2012, ch. 112, § 1, p. 310; am. 2013, ch. 343, § 3, p. 908; am. 2016, ch. 271, § 2, p. 728; am. 2017, ch. 249, § 1, p. 607.

## **STATUTORY NOTES**

### **Cross References.**

Public charter school commission, § 33-5213.

State board of education, § 33-101.

### **Amendments.**

The 2006 amendment, by ch. 16, redesignated the last paragraph of subsection (2).

The 2012 amendment, by ch. 112, rewrote subsection (2) to remove the growth cap of six new, public charter schools per year and to remove the

cap of one new, public charter school per district per year.

The 2013 amendment, by ch. 343, deleted “The limitation provided in this subsection (4)(c) does not apply to a home-based public virtual school.” at the end of paragraph (4)(c); substituted “any authorized chartering entity except a local school district board of trustees” for “the public charter school commission” in the first sentence of subsection (5); and rewrote subsection (7), which previously read: “The state board of education shall be responsible to designate those public charter schools that will be identified as a local education agency (LEA) as such term is defined in [34 CFR 300.28](#); however, only public charter schools chartered by the board of trustees of a school district may be included in that district’s LEA.”

The 2016 amendment, by ch. 271, inserted “or replicating an existing high-performing public charter school” in subsection (3) and added present subsection (6) and redesignated the subsequent subsections accordingly.

The 2017 amendment, by ch. 249, in subsection (2), added “unless the authorized chartering entity agrees to a later date” at the end of paragraph (b).

### **Compiler’s Notes.**

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

The abbreviation enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

Section 9 of S.L. 2005, ch. 255 provided that this section should take effect on and after December 31, 2005.

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

**33-5204. Nonprofit corporation — Liability — Insurance.** — (1) A public charter school shall be organized and managed under the Idaho nonprofit corporation act. The board of directors of a public charter school shall be deemed public agents authorized by a public school district, the public charter school commission, or the state board of education to control the public charter school, but shall function independently of any school board of trustees in any school district in which the public charter school is located or independently of the public charter school commission, except as provided in the charter. The nonprofit board as the charter holder may hold multiple charters under the following conditions:

- (a) Each public charter school must have its own performance certificate; and
- (b) Each public charter school must be independently accountable for its academic, financial and operational outcomes.

(2) For the purposes of [section 59-1302\(15\), Idaho Code](#), a public charter school created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of [section 63-3622O, Idaho Code](#), sales to or purchases by a public charter school are exempt from payment of the sales and use tax. A public charter school and the board of directors of a public charter school are subject to the provisions of:

- (a) [Sections 18-1351 through 18-1362, Idaho Code](#), on bribery and corrupt influence, except as provided by [section 33-5204A\(2\), Idaho Code](#);
- (b) Chapter 5, title 74, Idaho Code, on prohibitions against contracts with officers;
- (c) Chapter 4, title 74, Idaho Code, on ethics in government;
- (d) Chapter 2, title 74, Idaho Code, on open public meetings; and
- (e) Chapter 1, title 74, Idaho Code, on disclosure of public records;

in the same manner that a traditional public school and the board of school trustees of a school district are subject to those provisions.

(3) A public charter school may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and borrow money for such purposes, to the same extent and on the same conditions as a traditional public school district, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and other public schools, including those provided by chapter 9, title 6, Idaho Code. The authorized chartering entity that approves a public school charter shall have no liability for the acts, omissions, debts or other obligations of a public charter school, except as may be provided in the charter. A local public school district shall have no liability for the acts, omissions, debts or other obligations of a public charter school located in its district that has been approved by an authorized chartering entity other than the board of trustees of the local school district.

(4) Nothing in this chapter shall prevent the board of directors of a public charter school, operating as a nonprofit corporation, from borrowing money to finance the purchase or lease of school building facilities, equipment and furnishings of those school building facilities. Subject to the terms of a contractual agreement between the board and a lender, nothing herein shall prevent the board from using the facility, its equipment and furnishings as collateral for the loan.

(5) Public charter schools shall secure insurance for liability and property loss.

(6) It shall be unlawful for:

(a) Any director to have pecuniary interest, directly or indirectly, in any contract or other transaction pertaining to the maintenance or conduct of the authorized chartering entity and charter or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection. The board of directors of a public charter school may accept and award contracts involving the public charter school to businesses in which the director or a person related to him by blood or marriage within the second degree has a direct or indirect interest, provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of a public charter school for deposit in any bank or trust company, or the lending of moneys by any bank or trust company

to any public charter school, shall not be deemed to be a contract pertaining to the maintenance or conduct of a public charter school and authorized chartering entity within the meaning of this section; nor shall the payment by any public charter school board of directors of compensation to any bank or trust company for services rendered in the transaction of any banking business with such public charter school board of directors be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(b) The board of directors of any public charter school to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or will require, the payment or delivery of any public charter school funds, moneys or property to such spouse, except as provided in paragraph (c) of this subsection or in section 18-1361 or 18-1361A, Idaho Code.

(c) No spouse of any director may be employed by a public charter school physically located within the boundaries of a school district with a fall student enrollment population of greater than one thousand two hundred (1,200) in the prior school year. For public charter schools physically located within the boundaries of a school district with a fall student enrollment population of one thousand two hundred (1,200) or less in the prior school year, such spouse may be employed in a nonadministrative position for a school year if each of the following conditions has been met:

(i) The position has been listed as open for application on the public charter school website or in a local newspaper, whichever is consistent with the school's current practice, and the position shall be listed for at least sixty (60) days, unless the opening occurred during the school year, in which case the position shall be so listed for at least fifteen (15) days. If the position is listed in a newspaper, the listing shall be made in a manner consistent with the provisions of [section 60-106, Idaho Code](#);

(ii) No applications were received that met the minimum certification, endorsement, education or experience requirements of the position other than such spouse;



(iii) The director abstained from voting in the employment of the spouse and was absent from the meeting while such employment was being considered and determined.

The public charter school may employ such spouse for further school years, provided that the conditions contained in this paragraph are met for each school year in which such spouse is employed. The director shall abstain from voting in any decisions affecting the compensation, benefits, individual performance evaluation or disciplinary action related to the spouse and shall be absent from the meeting while such issues are being considered and determined. Such limitation shall include, but not be limited to: any matters relating to negotiations regarding compensation and benefits; discussion and negotiation with district benefits providers; and any matter relating to the spouse and letters of reprimand, direction, probation or termination. Such limitations shall not prohibit the trustee spouse from participating in deliberation and voting upon the district's annual fiscal budget or annual audit report. Any spouse of a director employed as a certificated employee pursuant to this paragraph shall be employed under a category 1 contract pursuant to [section 33-514A, Idaho Code](#).

(7) When any relative of any director or relative of the spouse of a director related by affinity or consanguinity within the second degree is to be considered for employment in a public charter school, such director shall abstain from voting in the election of such relative and shall be absent from the meeting while such employment is being considered and determined.

### **History.**

[I.C., § 33-5204](#), as added by 1998, ch. 92, § 1, p. 330; am. 1998, ch. 201, § 1, p. 717; am. 1999, ch. 244, § 2, p. 623; am. 2000, ch. 282, § 1, p. 905; am. 2000, ch. 443, § 2, p. 1404; am. 2001, ch. 64, § 1, p. 121; am. 2002, ch. 293, § 1, p. 845; am. 2004, ch. 371, § 4, p. 1099; am. 2005, ch. 376, § 3, p. 1201; am. 2014, ch. 252, § 3, p. 634; am. 2015, ch. 141, § 70, p. 379; am. 2016, ch. 271, § 3, p. 728.

## **STATUTORY NOTES**

### **Cross References.**

Idaho nonprofit corporation act, § 30-30-101 et seq.

Public charter school commission, § 33-5213.

State board of education, § 33-101 et seq.

### **Amendments.**

This section was enacted by S.L. 1998, ch. 92, § 1, effective July 1, 1998, and subsequently amended by S.L. 1998, ch. 201, § 1, effective July 1, 1998. The amendment by ch. 201, § 1, added the fourth sentence in subsection (1).

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 282 § 1, added subdivision (3) and redesignated former subdivision (3) as subdivision (4).

The 2000 amendment, by ch. 443 § 2, inserted “but shall function independently of any school board of trustees, except as provided in the charter” following “to control the charter school” in subsection (1).

The 2014 amendment, by ch. 252, inserted “in paragraph (c) of this subsection or” in paragraph (5)(b) and added paragraph (5)(c).

The 2015 amendment, by ch. 141, § 70, substituted “Chapter 5, title 74” for “Chapter 2, title 59” in paragraph (1)(b); substituted “Chapter 4, title 74” for “Chapter 7, title 59” in paragraph (1)(c); substituted “Chapter 2, title 74” for “Chapter 23, title 67” in paragraph (1)(d); and substituted “Chapter 1, title 74” for “Chapter 3, title 9” in paragraph (1)(e).

The 2016 amendment, by ch. 271, divided the extant subsection (1) into present subsections (1) and (2), redesignating the subsequent subsections; and in subsection (1), added the last sentence in the introductory paragraph, and added paragraphs (a) and (b).

### **Compiler’s Notes.**

This section was to be repealed effective July 1, 2018, pursuant to S.L. 2014, ch. 252, § 6, at which time a new § 33-5204 was to be enacted. However, S.L. 2018, ch. 197, §§ 3 and 6 to 11 repealed S.L. 2014, ch. 252, §§ 6, 9 and 10, S.L. 2015, ch. 141, §§ 71 and 198, and S.L. 2016, ch. 271,

§§ 4 and 14, repealing the repeal and the reenactment of the new section, effective July 1, 2018.

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 4 of S.L. 2000, ch. 443 declared an emergency. Approved April 17, 2000.

Section 2 of S.L. 2001, ch. 64 declared an emergency. Approved March 20, 2001.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

## **JUDICIAL DECISIONS**

### **Analysis**

[Action for libel and slander.](#)

[Charter school as political subdivision.](#)

### **Action for Libel and Slander.**

Charter school’s claim that a parent tortiously interfered with its responsibilities under the Idaho Public Charter Schools Act was a non-existent cause of action and unsupported by the common law, Idaho statutes, or Idaho case law, and the school could not maintain an action for libel and slander against an individual when that individual was speaking out on an issue of public concern, where the parent’s letters and criticisms, which addressed the manner in which officials at the charter school performed their duties and the school’s policies and programs, were clearly an expression of her opinion on a matter of public concern. [Nampa Charter Sch., Inc. v. Delapaz, 140 Idaho 23, 89 P.3d 863 \(2004\).](#)

### **Charter School As Political Subdivision.**

Charter school itself was a political subdivision of the state having been created by the state under this section and, therefore, had no privileges or immunities to invoke against the state. *Nampa Classical Acad. v. Goesling*, 714 F. Supp. 2d 1029 (D. Idaho 2010).

**33-5204A. Applicability of professional codes and standards — Limitations upon authority.** — (1) Every person who serves in a public charter school, either as an employee, contractor, or otherwise, in the capacity of teacher, supervisor, administrator, education specialist, school nurse or librarian, must comply with the professional codes and standards approved by the state board of education, including standards for ethics or conduct.

(2) Every employee of a public charter school and every member of the board of directors of a public charter school, whether compensated or noncompensated, shall comply with the standards of ethics or conduct applicable to public officials including, but not limited to, chapter 4, title 74, Idaho Code, except that [section 74-405, Idaho Code](#), which permits a noncompensated public official to have an interest in a contract made or entered into by the board of which he is a member under certain conditions, shall not apply to the board of directors of a public charter school. A member of the board of directors of a public charter school is prohibited from receiving a personal pecuniary benefit, directly or indirectly, pertaining to a contractual relationship with the public charter school.

### **History.**

[I.C., § 33-5204A](#), as added by 2004, ch. 371, § 5, p. 1099; am. 2015, ch. 141, § 72, p. 379.

## **STATUTORY NOTES**

### **Cross References.**

State board of education, § 33-101 et seq.

### **Amendments.**

The 2015 amendment, by ch. 141, in the first sentence in subsection (2), substituted “chapter 4, title 74” for “chapter 7, title 59” and “74-405” for “59-704A”.

### **Compiler’s Notes.**

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**Effective Dates.**

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

**33-5205. Petition to establish public charter school.** — (1) Intent. Any group of persons, upon creating a nonprofit corporation pursuant to section 33-5204, Idaho Code, may petition to establish a new public charter school, or to convert an existing traditional public school to a public charter school. The purpose of the charter petition is to present the proposed public charter school's academic and operational vision and plans, demonstrate the petitioner's capacities to execute the proposed vision and plans and provide the authorized chartering entity a clear basis for assessing the applicant's plans and capacities. An approved charter petition shall not serve as the school's performance certificate.

(2) New Public Charter School Petition. Except for a petition to establish a new virtual school, which shall follow subsection (6) of this section, or to convert an existing traditional public school, which shall follow subsection (7) of this section, a petition to establish a new public charter school shall follow the process set forth in subsections (3) through (5) of this section.

(3) Application.

(a) The state board of education, by rule, shall develop an application to establish a new public charter school which, when submitted by petitioners, shall constitute the public charter school's completed petition. The application is not intended to be exhaustive, but shall require petitioners to provide descriptions of the following key features of the prospective public charter school:

- (i) Educational program, including student academic proficiency and growth standards and measurement methods and any mission-specific standards that may be unique to the school;
- (ii) Financial and facilities plan;
- (iii) Board capacity and governance structure; and
- (iv) Student demand and primary attendance area.

(b) Prior to submitting the completed petition to an authorized chartering entity described in [section 33-5202A\(1\), Idaho Code](#), petitioners shall send a letter and a copy of the completed petition to the superintendent of

each district that overlaps the proposed public charter school's primary attendance area. The purpose of the letter is to inform the superintendent that petitioners are seeking an authorizer, and to offer to attend a district board of trustees meeting, if the superintendent so requests.

(c) A minimum of four (4) weeks after sending the letter and copy of the completed petition pursuant to paragraph (b) of this subsection, or earlier if the superintendent of each district that overlaps the proposed public charter school's primary attendance area agrees, petitioners may submit the completed petition to an authorized chartering entity pursuant to [section 33-5202A\(1\), Idaho Code](#). Upon receipt of the completed petition, which may be received electronically, representatives of the authorized chartering entity shall review, and may contract with a third party or other government agency to assist in reviewing, the petition. If necessary, representatives of the authorized chartering entity may request from petitioners limited additional information necessary to clarify the contents of the completed petition. Any subsequent change to the completed petition will comprise the revised petition.

(4) Hearing. If the authorized chartering entity is the public charter school commission, within ten (10) weeks of receiving a revised petition and not later than twelve (12) weeks after receiving the completed petition, commission staff shall provide commissioners with a written recommendation that the commission either approve, deny or grant conditional approval of the petition. Concurrently, the commission staff shall provide a copy of the recommendation to petitioners, along with a notice of a hearing date, and shall notify the district in which the proposed charter school will be physically located of the opportunity to submit written comments or to testify at the hearing. Petitioners may testify to support or refute the recommendation. If the authorized chartering entity is other than the public charter school commission, it may develop its own hearing process.

(5) Petition Decision. If the authorized chartering entity approves the petition, the parties shall negotiate the terms of the performance certificate pursuant to [section 33-5205B, Idaho Code](#). If the authorized chartering entity grants conditional approval, the conditions may be considered reasonable pre-opening requirements or conditions pursuant to [section 33-](#)



5206, Idaho Code, or may be added to the charter upon agreement of petitioners and the authorized chartering entity.

(6) Virtual Schools.

(a) In the case of a petition for a public virtual charter school, if the primary attendance area described in the petition of a proposed public virtual charter school extends within the boundaries of five (5) or fewer local school districts, the prospective authorizer shall provide notice in writing to those local school districts of the public hearing no less than thirty (30) days prior to the public hearing. The public hearing shall include any oral or written comments that an authorized representative of the local school districts may provide regarding the merits of the petition and any potential impacts on the school districts.

(b) An authorized chartering entity, except for a school district board of trustees, may approve a charter for a public virtual school under the provisions of this chapter only if it determines that the petition contains the requirements of subsection (2) of this section and the additional statements describing the following:

- (i) The learning management system by which courses will be delivered;
- (ii) The role of the online teacher, including the consistent availability of the teacher to provide guidance around course material, methods of individualized learning in the online course and the means by which student work will be assessed;
- (iii) A plan for the provision of professional development specific to the public virtual school environment;
- (iv) The means by which public virtual school students will receive appropriate teacher-to-student interaction, including timely and frequent feedback about student progress;
- (v) The means by which the public virtual school will verify student attendance and award course credit. Attendance at public virtual schools shall focus primarily on coursework and activities that are correlated to the Idaho state thoroughness standards;

(vi) A plan for the provision of technical support relevant to the delivery of online courses;

(vii) The means by which the public virtual school will provide opportunity for student-to-student interaction; and

(viii) A plan for ensuring equal access for all students, including the provision of necessary hardware, software and internet connectivity required for participation in online coursework.

(7) Conversion Charter Schools. A petition to convert an existing traditional public school shall be submitted to the board of trustees of the district in which the school is located for review and approval. The petition shall be signed by not less than sixty percent (60%) of the teachers currently employed by the school district at the school to be converted, and by one (1) or more parents or guardians of not less than sixty percent (60%) of the students currently attending the school to be converted. Each petition submitted to convert an existing school or to establish a new charter school shall contain a copy of the articles of incorporation and the bylaws of the nonprofit corporation, which shall be deemed incorporated into the petition.

(8) Term. An initial charter, if approved, shall be granted for a term of five (5) operating years. This term shall commence on July 1 preceding the public charter school's first year of operation.

### **History.**

**I.C., § 33-5205**, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 3, p. 623; am. 2000, ch. 443, § 3, p. 1404; am. 2004, ch. 371, § 6, p. 1099; am. 2004, ch. 375, § 1, p. 1117; am. 2005, ch. 376, § 4, p. 1201; am. 2008, ch. 105, § 2, p. 289; am. 2008, ch. 157, § 1, p. 451; am. 2009, ch. 11, § 11, p. 14; am. 2009, ch. 41, § 1, p. 115; am. 2009, ch. 160, § 1, p. 477; am. 2009, ch. 200, § 1, p. 639; am. 2010, ch. 79, § 10, p. 133; am. 2012, ch. 188, § 1, p. 495; am. 2013, ch. 343, § 4, p. 908; am. 2015, ch. 129, § 1, p. 328; am. 2016, ch. 271, § 5, p. 728; am. 2017, ch. 249, § 2, p. 607.

## **STATUTORY NOTES**

### **Cross References.**

Public charter school commission, § 33-5213.

Public employee retirement system, § 59-1301 et seq.

State board of education, § 33-101 et seq.

### **Amendments.**

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 371, substituted “public charter school” for “charter school” throughout the section; in subsection (1), rewrote the first clause of the introductory sentence; designated the former second sentence as paragraph (b), designated the former third sentence as paragraph (a), rewriting that sentence and adding the second sentence thereof; substituted “the disciplinary procedures that the public charter school will utilize, including the procedure” for “the procedures” at the beginning of paragraph (3)(k); substituted “same district as the public charter school, as provided for in [section 33-203\(7\), Idaho Code](#)” for “district as provided for in chapter 2, title 33, Idaho Code” at the end of paragraph (3)(r); and added paragraph (3)(s).

The 2004 amendment, by ch. 275, added the last sentence in paragraph (1)(e).

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 105, added present subsection (6).

The 2008 amendment, by ch. 157, in subsection (1)(c), in the first sentence, added “but such referral shall not be made until the local board has documented its due diligence in considering the petition,” and added the second sentence; in the introductory paragraph in subsection (3), inserted the reference to subsection (5); and added subsection (5).

This section was amended by four 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 11, corrected the erroneously duplicated subsection (5) designation.

The 2009 amendment, by ch. 41, in subsection (3)(j), in the introductory paragraph, added the fourth, fifth, and last sentences, added subsections (3)

(j)(i) and (ii), and added the last sentence.

The 2009 amendment, by ch. 160, added the third, fifth, and sixth sentence in subsection (2).

The 2009 amendment, by ch. 200, in subsection (2), in the second paragraph, added the first sentence, and in the last sentence, inserted “local,” deleted “in which the proposed public charter school would be physically located” preceding “may provide,” and twice substituted “school districts” for “school district,” and in the last paragraph, added the first four sentences, and in the fifth sentence, substituted “any petition” for “the petition” and “any public hearing” for “the public hearing,” and inserted “provided for in this section.”

The 2010 amendment, by ch. 79, in the first paragraph in subsection (2), deleted the former last sentence, which read: “In the case of a petition for a non-virtual public charter school submitted to the public charter school commission, the board of the district in which the proposed public charter school will be physically located, shall be notified of the hearing in writing, by the public charter school commission, no less than thirty (30) days prior to the public hearing.”

The 2012 amendment, by ch. 188, rewrote the section to the extent that a detailed comparison is impracticable.

The 2013 amendment, by ch. 343, rewrote the section to the extent that a detailed comparison is impracticable.

The 2015 amendment, by ch. 129, paragraph (3)(k), inserted “to pupils seeking to transfer from another Idaho public charter school at which they have been enrolled for at least one (1) year, provided that this admission preference shall be subject to an existing written agreement for such preference between the subject charter schools; fourth” and substituted “fifth” for “fourth” in the second sentence; and inserted “to pupils seeking to transfer from another Idaho public charter school at which they have been enrolled for at least one (1) year, provided that this admission preference shall be subject to an existing written agreement for such preference between the subject charter schools; fifth” and substituted “sixth” for “fifth” in the fifth sentence.

The 2016 amendment, by ch. 271, in subsection (1), deleted the former first sentence in paragraph (b), which read: “A petition to establish a new public virtual school shall not be submitted directly to a local school district board of trustees” added present subsection (c), and redesignated the subsequent paragraphs accordingly; designated the paragraphs in subsection (2), inserted “for a new or replication public charter school” in the first sentence of the introductory paragraph and inserted “new or replication” near the beginning of present paragraph (b); and inserted “or replication public charter school” following “a new charter school” twice in paragraph (3)(k).

The 2017 amendment, by ch. 249, rewrote the section to the extent that a detailed comparison is impracticable.

### **Compiler’s Notes.**

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 4 of S.L. 2000, ch. 443 declared an emergency. Approved April 17, 2000.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

**33-5205A. Transfer of charter.** — (1) A charter and performance certificate for a public charter school may be transferred to, and placed under the chartering authority of, any authorized chartering entity if the current authorizer, the receiving authorizer, and the board of directors of the public charter school all agree to such transfer, including any revision to the charter and performance certificate that may be required in connection with such transfer. Provided however, that a charter and performance certificate shall not be transferred to a school district board of trustees in which the public charter school is not physically located. A request to transfer a charter may be initiated by the board of directors of a public charter school or by the authorized chartering entity with chartering authority over the charter of such public charter school.

(2) A public charter school, authorized by any authorized chartering entity except a school district board of trustees, which has a primary attendance area located within more than one (1) school district, may transfer the physical location of its public charter school within its primary attendance area to locate the facilities within the boundaries of another school district within the primary attendance area if the authorized chartering entity, the board of trustees of each of the relevant school districts and the board of directors of the public charter school all approve of such transfer of facilities location, and if the authorized chartering entity approves any revisions to the charter that may be required in connection with such transfer.

(3) If all parties fail to reach agreement in regard to the request to transfer a charter and performance certificate, as required herein, then the matter may be appealed directly to the state board of education. With respect to such appeal, the state board of education shall substantially follow the procedure as provided in [section 33-5207\(5\)\(b\), Idaho Code](#). A transferred charter school shall not be considered a new public charter school.

### **History.**

[I.C., § 33-5205A](#), as added by 2005, ch. 376, § 5, p. 1201; am. 2008, ch. 171, § 1, p. 471; am. 2012, ch. 188, § 2, p. 495; am. 2013, ch. 343, § 5, p. 908.

## **STATUTORY NOTES**

### **Cross References.**

Public charter school commission, § 33-5213.

State board of education, § 33-101 et seq.

### **Amendments.**

The 2008 amendment, by ch. 171, added the subsection (1) and (3) designations to existing provisions and added subsection (2).

The 2012 amendment, by ch. 188, in subsection (2), substituted “authorized” for “approved” near the beginning of the subsection and deleted “approved” preceding the third occurrence of “primary attendance area.”

The 2013 amendment, by ch. 343, rewrote the section to the extent that a detailed comparison is impracticable.

### **Effective Dates.**

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

**33-5205B. Performance certificates.** — (1) Within seventy-five (75) days of approval of a charter application, the authorized chartering entity and the governing board of the approved public charter school shall execute a performance certificate that clearly sets forth the academic and operational performance expectations and measures by which the public charter school will be judged and the administrative relationship between the authorized chartering entity and public charter school, including each party's rights and duties. The performance expectations and measures set forth in the performance certificate shall include, but need not be limited to, applicable federal and state accountability requirements. The performance provisions may be refined or amended by mutual agreement after the public charter school is operating and has collected baseline achievement data for its enrolled students.

(2) The performance certificate shall be signed by the president of the authorized chartering entity's governing board and the president of the public charter school's governing body. Within fourteen (14) days of executing a performance certificate, the authorized chartering entity shall submit to the state board of education written notification of the performance certificate execution, including a copy of the performance certificate.

(3) No public charter school may commence operations without a performance certificate executed in accordance with this provision and approved in an open meeting of the authorized chartering entity's governing board.

(4) All public charter schools approved prior to July 1, 2013, shall execute performance certificates with their authorizers no later than July 1, 2014. Such certificates shall ensure that each public charter school approved prior to July 1, 2014, is evaluated for renewal or nonrenewal between March 1, 2016, and March 1, 2019.

### **History.**

I.C., § 33-5205B, as added by 2013, ch. 343, § 6, p. 908.

## **STATUTORY NOTES**



**Effective Dates.**

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

**33-5205C. Public charter school replication.** — (1) Public charter schools may petition for replication, subject to the following provisions:

(a) The public charter schools must have successfully completed at least one (1) renewal cycle and be eligible for a nonconditional renewal; or

(b) Public charter schools that are scheduled to be evaluated for renewal or nonrenewal between March 1, 2016, and March 1, 2019, must be rated in the top twenty percent (20%) of all Idaho public schools by the state's accountability system for the two (2) previous years.

(2) Replication public charter schools must serve the same, or a subset of the same, grades as the public charter school being replicated and the operational model must be the same as that of the public charter school being replicated.

(3) A public charter school authorized by the public charter school commission or an Idaho college or university pursuant to [section 33-5202A, Idaho Code](#), must provide written notice and opportunity to comment to the school district for which the replication school will be located at least thirty (30) days prior to submitting the replication request to the authorizing entity. The petitioner must provide written notice to the state department of education at the time the petition is submitted to the authorized chartering entity.

(4) A school district authorizer may not approve the replication of a public charter school that is physically located outside of the authorizer's school district boundaries.

(5) Replication petitions are not subject to a sufficiency review by the state department of education.

(6) The replicated public charter schools under a single charter holder shall be authorized and funded as separate schools. The charter holder must obtain annual independent comprehensive fiscal audits that treat each school as a separate component unit. Funds appropriated by the state must be used toward the operations of the public charter school for which they were appropriated. This does not prohibit multiple public charter schools under a single charter holder from combining resources toward

administrative or program costs or prohibit public charter schools from participating in cooperative education services pursuant to sections 33-315 and 33-316, Idaho Code.

(7) Authorized chartering entities must establish policies regarding the criteria that will be considered when evaluating a petition for replication. Such criteria must include at a minimum the following replication petition requirements:

- (a) A description of the capacity of the charter holder to successfully replicate an additional school;
- (b) A description of how the charter holder will manage multiple charter schools while maintaining a high level of academic and fiscal performance in the original public charter school and the replication school; and
- (c) A description of how the charter holder will incorporate representation and input in the school operations from the local area where the replication public charter school is physically located if the location is outside of the school district of the public charter school being replicated.

**History.**

I.C., § 33-5205C, as added by 2016, ch. 271, § 6, p. 728.

**STATUTORY NOTES**

**Cross References.**

State department of education, § 33-125.

**33-5206. Requirements and prohibitions of a public charter school.**

— (1) In addition to any other requirements imposed in this chapter, a public charter school shall be nonsectarian in its programs, affiliations, admission policies, employment practices, and all other operations, shall not charge tuition, levy taxes or issue bonds, and shall not discriminate against any student on any basis prohibited by the federal or state constitution or any federal, state or local law. Public charter schools shall comply with the federal individuals with disabilities education act. Admission to a public charter school shall not be determined according to the place of residence of the student, or of the student's parent or guardian within the district, except that a new replication or conversion public charter school established under the provisions of this chapter shall adopt and maintain a policy giving admission preference to students who reside within the contiguous and compact primary attendance area of that public charter school.

(2) No board of trustees shall require any employee of the school district to be involuntarily assigned to work in a public charter school.

(3) Certified teachers in a public charter school shall be considered public school teachers. Educational experience shall accrue for service in a public charter school and such experience shall be counted by any school district for any teacher who has been employed in a public charter school. The staff of the public charter school shall be considered a separate unit for the purposes of collective bargaining.

(4) Employment of charter school teachers and administrators shall be on written contract conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder. Administrators may be certified pursuant to the requirements set forth in chapter 12, title 33, Idaho Code, pertaining to traditional public schools, or may hold a charter school administrator certificate. An applicant is eligible for a charter school administrator certificate if the applicant:

(a) Holds a bachelor's degree from an accredited four (4) year institution;

(b) Submits to a criminal history check as described in [section 33-130, Idaho Code](#);

(c) Completes a course consisting of a minimum of three (3) semester credits in the statewide framework for teacher evaluations, which shall include a laboratory component;

(d) Submits a letter from a charter school board of directors stating that the board of directors has carefully considered the applicant's candidacy, has chosen to hire the applicant, and is committed to overseeing the applicant's performance; and

(e) Has one (1) or more of the following:

(i) Five (5) or more years of experience administering a public charter school;

(ii) A post-baccalaureate degree and a minimum of five (5) years of experience in school administration, public administration, business administration, or military administration;

(iii) Successful completion of a nationally recognized charter school leaders fellowship; or

(iv) Five (5) or more years of teaching experience and a commitment from an administrator at a charter school in academic, operational, and financial good standing according to its authorizer's most recent review to mentor the applicant for a minimum of one (1) year.

A charter school administrator certificate shall be valid for five (5) years and renewable thereafter. Administrators shall be subject to oversight by the professional standards commission. Certificates may be revoked pursuant to the provisions of [section 33-1208, Idaho Code](#). Issuance of a certificate to any applicant may be refused for such reason as would have constituted grounds for revocation.

(5) No board of trustees shall require any student enrolled in the school district to attend a public charter school.

(6) Authorized chartering entities may establish reasonable pre-opening requirements or conditions to monitor the start-up progress of newly approved public charter schools and ensure that they are prepared to open smoothly on the date agreed, and to ensure that each school meets all

building, health, safety, insurance and other legal requirements for school opening.

(7) Each public charter school shall annually submit the audit of its fiscal operations to the authorized chartering entity.

(8) A public charter school or the authorized chartering entity may enter into negotiations to revise a charter or performance certificate at any time. If a public charter school petitions to revise its charter or performance certificate, the authorized chartering entity's review of the revised petition shall be limited in scope solely to the proposed revisions. Except for public charter schools authorized by a school district board of trustees, when a non-virtual public charter school submits a proposed charter revision to its authorized chartering entity and such revision includes a proposal to increase such public charter school's approved student enrollment cap by ten percent (10%) or more, the authorized chartering entity shall hold a public hearing on such petition. The authorized chartering entity shall provide the board of the local school district in which the public charter school is physically located notice in writing of such hearing no later than thirty (30) days prior to the hearing. The public hearing shall include any oral or written comments that an authorized representative of the school district in which the public charter school is physically located may provide regarding the impact of the proposed charter revision upon the school district. Such public hearing shall also include any oral or written comments that any petitioner may provide regarding the impact of the proposed charter revision upon such school district.

(9) When a charter is nonrenewed pursuant to the provisions of [section 33-5209B, Idaho Code](#), revoked pursuant to [section 33-5209C, Idaho Code](#), or the board of directors of the public charter school terminates the charter, the assets of the public charter school remaining after all debts of the public charter school have been satisfied must be returned to the authorized chartering entity for distribution in accordance with applicable law.

(10) Public charter schools may contract with educational services providers subject to the following provisions:

(a) Educational services providers, whether for-profit or nonprofit, shall be third-party entities separate from the public charter schools with

which they contract. Educational services providers shall not be considered governmental entities.

(b) No more than one-third (1/3) of the public charter school's board membership may be comprised of nonprofit educational services provider representatives. Nonprofit educational services provider representatives may not be employees of the public charter school or the educational services provider and may not hold office as president or treasurer on the public charter school's board. For-profit educational services providers may not have representatives on the public charter school's board of directors.

(c) Public charter school board of director members shall annually disclose any existing and potential conflicts of interest, pecuniary or otherwise, with affiliated educational services providers.

(d) Charter holders shall retain responsibility for academic, fiscal and organizational operations and outcomes of the school and may not relinquish this responsibility to any other entity.

(e) Contracts must ensure that school boards retain the right to terminate the contract for failure to meet defined performance standards.

(f) Contracts must ensure that assets purchased by educational services providers on behalf of the school, using public funds, shall remain assets of the school. The provisions of this paragraph shall not prevent educational services providers from acquiring assets using revenue acquired through management fees.

(g) Charter holders shall consult legal counsel independent of the party with whom they are contracting for purposes of reviewing the school's management contract and facility lease or purchase agreements to ensure compliance with applicable state and federal law, including requirements that state entities not enter into contracts that obligate them beyond the terms of any appropriation of funds by the state legislature.

(h) Charter holders must ensure that their facility contracts are separate from any and all management contracts.

(i) Prior to approval of the charter petition indicating the school board's intention to contract with an educational services provider, authorized chartering entities shall conduct a thorough evaluation of the academic,

financial and organizational outcomes of other schools that have contracted with the educational services provider and evidence of the educational services provider's capacity to successfully grow the public charter school while maintaining quality management and instruction in existing schools.

(11) Admission procedures, including provision for overenrollment, shall provide that the initial admission procedures for a new public charter school or replication public charter school will be determined by lottery or other random method, except as otherwise provided herein.

(a) If initial capacity is insufficient to enroll all pupils who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; second, to siblings of pupils already selected by the lottery or other random method; third, to pupils seeking to transfer from another Idaho public charter school at which they have been enrolled for at least one (1) year, provided that this admission preference shall be subject to an existing written agreement for such preference between the subject charter schools; fourth, to students residing within the primary attendance area of the public charter school; and fifth, by an equitable selection process such as a lottery or other random method. If so stated in its petition, a public charter school may weight the school's lottery to preference admission for the following educationally disadvantaged students: students living at or below one hundred eighty-five percent (185%) of the federal poverty level, students who are homeless or in foster care, children with disabilities as defined in [section 33-2001, Idaho Code](#), students with limited English proficiency, and students who are at-risk as defined in [section 33-1001, Idaho Code](#). If so stated in its petition, a new public charter school or replication public charter school may include the children of full-time employees of the public charter school within the first priority group subject to the limitations therein. Otherwise, such children shall be included in the highest priority group for which they would otherwise be eligible.

(b) If capacity is insufficient to enroll all pupils who submit a timely application for subsequent school terms, then the admission procedures



may provide that preference shall be given in the following order: first, to pupils returning to the public charter school in the second or any subsequent year of its operation; second, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; third, to siblings of pupils already enrolled in the public charter school; fourth, to pupils seeking to transfer from another Idaho public charter school at which they have been enrolled for at least one (1) year, provided that this admission preference shall be subject to an existing written agreement for such preference between the subject charter schools; fifth, to students residing within the primary attendance area of the public charter school; and sixth, by an equitable selection process such as a lottery or other random method. There shall be no carryover from year to year of the list maintained to fill vacancies. A new lottery shall be conducted each year to fill vacancies that become available. If so stated in its petition, a public charter school may weight the school's lottery to preference admission for the following educationally disadvantaged students: students living at or below one hundred eighty-five percent (185%) of the federal poverty level, students who are homeless or in foster care, children with disabilities as defined in [section 33-2001, Idaho Code](#), students with limited English proficiency, and students who are at-risk as defined in [section 33-1001, Idaho Code](#). If so stated in its petition, a public charter school may include the following children within the second priority group subject to the limitations therein:

- (i) The children of full-time employees of the public charter school; and
  - (ii) Children who attended the public charter school within the previous three (3) school years, but who withdrew as a result of the relocation of a parent or guardian due to an academic sabbatical, employer or military transfer or reassignment.
- (c) Each public charter school shall establish a process under which a child may apply for enrollment or register for courses, regardless of where such child resides at the time of application or registration, if the child is a dependent of a member of the United States armed forces who has received transfer orders to a location in Idaho and will, upon such transfer, reside in an area served by the public charter school. If capacity

is insufficient as described in paragraph (a) or (b) of this subsection, a child described in this paragraph shall be treated as a student residing within the primary attendance area of the public charter school for purposes of preference.

Otherwise, such children shall be included in the highest priority group for which they would otherwise be eligible.

(12) Public charter schools shall comply with [section 33-119, Idaho Code](#), as it applies to secondary school accreditation.

(13) Public charter school students shall be tested with the same standardized tests as other Idaho public school students.

### **History.**

[I.C., § 33-5206](#), as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 4, p. 623; am. 2001, ch. 209, § 1, p. 831; am. 2004, ch. 220, § 1, p. 658; am. 2004, ch. 371, § 7, p. 1099; am. 2004, ch. 376, § 1, p. 1120; am. 2005, ch. 376, § 6, p. 1201; am. 2012, ch. 188, § 3, p. 495; am. 2013, ch. 343, § 7, p. 908; am. 2016, ch. 54, § 1, p. 150; am. 2016, ch. 271, § 7, p. 728; am. 2017, ch. 249, § 3, p. 607; am. 2019, ch. 197, § 1, p. 611; am. 2020, ch. 64, § 2, p. 147; am. 2020, ch. 322, § 1, p. 929.

## **STATUTORY NOTES**

### **Cross References.**

Professional standards commission, § 33-1252.

### **Amendments.**

This section was amended by three 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 220, added the last two sentences of subsection (1).

The 2004 amendment, by ch. 371, substituted “public charter school” for “charter school” throughout the section, inserted “public charter” preceding the reference to “school” at the end of subsection (1), substituted “authorized chartering entity” for “board of trustees” in the first sentences of subsections (6) and (7), and deleted the former second sentence of the

latter subsection, which had read, “In the case of a new charter school whose charter was granted by the state board of education pursuant to [section 33-507, Idaho Code](#), the annual report shall be submitted to the state board of education.”

The 2004 amendment, by ch. 376, redesignated former subsections (4) through (6) as subsections (5) through (7), and inserted subsection (4).

The 2012 amendment, by ch. 188, in subsection (1), inserted “primary” preceding “attendance area” near the end of the subsection and deleted the former last two sentences which read, “The attendance area of a charter school, as described in the petition, shall be composed of compact and contiguous area. For the purposes of this section, if services are available to students throughout the state, the state of Idaho is considered a compact and contiguous area”; in subsection (7), inserted “measurable” preceding “student educational standards”; added subsection (8); and renumbered former subsection (8) as subsection (9).

The 2013 amendment, by ch. 343, rewrote subsections (6), (7), and (8) and inserted “nonrenewed pursuant to the provisions of [section 33-5209B, Idaho Code](#)” in subsection (9).

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 54, deleted “in form as approved by the state superintendent of public instruction” following “written contract” in subsection (4).

The 2016 amendment, by ch. 271, substituted “except that a new, replication or conversion” for “except that a new or conversion” in the last sentence in subsection (1) and added subsection (10).

The 2017 amendment, by ch. 249, deleted “upon approval” following “prohibitions” from the section heading; in subsection (1), added the present second sentence and inserted “contiguous and compact” near the end of the last sentence; added the last sentence in subsection (3); rewrote subsection (7), which formerly read: “Each public charter school shall annually submit the audit of the fiscal operations as required in [section 33-5205\(3\)\(l\), Idaho Code](#), and a copy of the public charter school’s

accreditation report to the authorized chartering entity that approved its charter”; and added subsections (11) to (13).

The 2019 amendment, by ch. 197, in subsection (4), added everything after the first sentence.

This section was amended by two 2020 acts which appear to be compatible and have been compiled together.

The 2020 amendment, by ch. 64, added paragraph (11)(c).

The 2020 amendment, by ch. 322, in subsection (11), added the second sentence in paragraph (a) and added the next-to-last sentence in the introductory paragraph in paragraph (b).

### **Federal References.**

The federal individuals with disabilities education act, referred to in subsection (1), is codified as [20 USCS § 1400 et seq.](#)

### **Compiler’s Notes.**

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

**33-5207. Charter appeal procedure.** — (1) If a local school board of trustees, acting in its capacity as an authorized chartering entity, approves a petition for the conversion of an existing traditional public school within the school district over the objection of thirty (30) or more persons or employees of the district, or if an authorized chartering entity denies a petition for the establishment of a new or replication public charter school for any reason including, but not limited to, failure by the petitioner to follow procedures or for failure to provide required information, then such decisions may be appealed to the state superintendent of public instruction within thirty (30) days of the date of the written decision, at the request of persons opposing the conversion of an existing traditional public school, or at the request of the petitioner whose request for a new charter was denied.

(2) The state superintendent of public instruction shall select a hearing officer to review the action of the authorized chartering entity, pursuant to [section 67-5242, Idaho Code](#). The hearing officer shall, within thirty (30) days of receipt of the request, review the full record regarding the charter petition and convene a public hearing regarding the charter petition. Within ten (10) days of the public hearing, the hearing officer shall submit a written recommendation to the authorized chartering entity and to the persons requesting the review. The recommendation by the hearing officer either to affirm or reverse the decision of the authorized chartering entity shall be based upon the full record regarding the charter petition, including the standards and criteria contained in this chapter and upon any public charter school rules adopted by the state board of education. The recommendation shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the recommendations based on the applicable statutory provisions and factual information contained in the record.

(3) Within thirty (30) days following receipt of the hearing officer's written recommendation, the authorized chartering entity shall hold a meeting open to the public for the purpose of reviewing the hearing officer's written recommendation. Within ten (10) days of such meeting, the authorized chartering entity shall either affirm or reverse its initial decision.

The authorized chartering entity's decision shall be in writing and contain findings which explain the reasons for its decision.

(4) If, upon reconsideration of a decision to approve the conversion of a traditional public school to a public charter school, the local school board:

(a) Affirms its initial decision to authorize such conversion, the charter shall be approved and there shall be no further appeal.

(b) Reverses its initial decision and denies the conversion, that decision is final and there shall be no further appeal.

(5) If, upon reconsideration of a decision to deny a petition for a public charter school, the authorized chartering entity:

(a) Reverses its initial decision and approves the public charter school petition, there shall be no further appeal.

(b) Affirms its initial decision denying the public charter school petition, the board of directors of the nonprofit corporation identified in the petition may appeal to the state board of education. The state board of education shall hold a public hearing within a reasonable time after receiving notice of such appeal but no later than sixty (60) calendar days after receiving such notice, and after the public hearing, shall take any of the following actions: (i) approve or deny the petition for the public charter school, provided that the state board of education shall only approve the petition if it determines that the authorized chartering entity failed to appropriately consider the charter petition, or if it acted in an arbitrary manner in denying the petition; or (ii) in the case of a denial by the board of a local school district, redirect the matter to the public charter school commission for further review. Such public hearing shall be conducted pursuant to procedures as set by the state board of education.

(6) A public charter school for which a charter is approved by the state board of education shall qualify fully as a public charter school for all funding and other purposes of this chapter. The public charter school commission shall assume the role of the authorized chartering entity for any charter approved by the state board of education as provided in subsection (5)(b) of this section. Employees of a public charter school approved by the state board of education shall not be considered employees of the local

school district in which the public charter school is located, nor of the state board of education, nor of the commission.

(7) The decision of the state board of education shall be subject to review pursuant to chapter 52, title 67, Idaho Code. Nothing in this section shall prevent a petitioner from bringing a new petition for a public charter school at a later time.

(8) There shall be no appeal of a decision by a local school board of trustees which denies the conversion of an existing traditional public school within that district to a public charter school, or by an authorized chartering entity which approves a petition for a public charter school.

### **History.**

**I.C., § 33-5207**, as added by 1998, ch. 92, § 1, p. 330; am. 1998, ch. 201, § 2, p. 717; am. 2004, ch. 371, § 8, p. 1099; am. 2005, ch. 376, § 7, p. 1201; am. 2012, ch. 188, § 4, p. 495; am. 2013, ch. 343, § 8, p. 908; am. 2016, ch. 271, § 8, p. 728.

## **STATUTORY NOTES**

### **Cross References.**

Public charter school commission, § 33-5213.

State board of education, § 33-101 et seq.

State superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

This section was enacted by S.L. 1998, ch. 92, § 1, effective July 1, 1998, and subsequently amended by S.L. 1998, ch. 201, § 2, effective July 1, 1998. The amendment by ch. 201, § 2, added the third sentence in subdivision (5)(b) and inserted “nor of the state board of education” near the end of subsection (6).

The 2012 amendment, by ch. 188, in subsection (2), inserted “full record regarding the” in the second sentence and inserted “full record regarding the charter petition, including the” in the fourth sentence.

The 2013 amendment, by ch. 343, substituted “or (ii) in the case of a denial by the board of a local school district, redirect the matter to the

public charter school commission for further review” for “(ii) remand the matter back to the authorized chartering entity, which shall have authority to further review and act on such matter as directed by the state board of education; or (iii) redirect the matter to another authorized chartering entity for further review as directed by the state board of education” in paragraph (5)(b).

The 2016 amendment, by ch. 271, substituted “new or replication public charter school” for “new or public charter school” near the middle of subsection (1).

### **Compiler’s Notes.**

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”



**33-5208. Public charter school financial support.** — Except as provided in subsection (10) of this section, from the state educational support program the state department of education shall make the following apportionment to each public charter school for each fiscal year based on attendance figures submitted in a manner and time as required by the department of education:

(1) Per student support. Computation of support units for each public charter school shall be calculated as if it were a separate school according to the schedules in [section 33-1002\(4\), Idaho Code](#), except that public charter schools with fewer than one hundred (100) secondary ADA shall use a divisor of twelve (12) and the minimum units shall not apply, and no public charter school shall receive an increase in support units that exceeds the support units it received in the prior year by more than thirty (30). Funding from the state educational support program shall be equal to the total distribution factor, plus the salary-based apportionment provided in chapter 10, title 33, Idaho Code. Provided however, any public charter school that is formed by the conversion of an existing traditional public school shall be assigned divisors, pursuant to [section 33-1002, Idaho Code](#), that are no lower than the divisors of the school district in which the traditional public school is located, for each category of pupils listed.

(2) Special education. For each student enrolled in the public charter school who is entitled to special education services, the state and federal funds from the exceptional child education program for that student that would have been apportioned for that student to the school district in which the public charter school is located.

(3) Alternative school support. Public charter schools may qualify under the provisions of sections 33-1002 and 33-1002C, Idaho Code, provided the public charter school meets the necessary statutory requirements, and students qualify for attendance at an alternative school as provided by rule of the state board of education.

(4) Transportation support. Support shall be paid to the public charter school as provided in chapter 15, title 33, Idaho Code, and [section 33-1006, Idaho Code](#). Each public charter school shall furnish the department with an

enrollment count as of the first Friday in November, of public charter school students who are eligible for reimbursement of transportation costs under the provisions of this subsection and who reside more than one and one-half (1 ½) miles from the school. The state department of education is authorized to include in the annual appropriation to the charter school sixty percent (60%) of the estimated transportation cost. The final appropriation payment in July shall reflect reimbursements of actual costs pursuant to [section 33-1006, Idaho Code](#). To be eligible for state reimbursement under the provisions of [section 33-1006, Idaho Code](#), the student to be transported must reside within the public charter school's primary attendance area, and must meet at least one (1) of the following two (2) criteria:

- (a) The student resides within the school district in which the public charter school is physically located; or
- (b) The student resides within fifteen (15) miles of the public charter school, by road.

The limitations placed by this subsection on the reimbursement of transportation costs for certain students shall not apply to public virtual schools.

(5) Facilities funds. The state department of education shall distribute facilities funds to public charter schools for each enrolled student in which a majority of the student's instruction is received at a facility that is owned or leased by the public charter school. Such funds shall be used to defray the purchase, fee, loan or lease costs associated with payments for real property used by the students or employees of the public charter school for educational or administrative purposes. Such funds shall be distributed from the moneys appropriated to the educational support program and shall be calculated as a percentage of the statewide average amount of bond and plant facility funds levied per student by Idaho school districts, as follows:

Fiscal Year 2014	Twenty Percent (20%)
Fiscal Year 2015	Thirty Percent (30%)

For fiscal year 2016 and each fiscal year thereafter, this percentage shall increase by ten percent (10%) each time the total appropriation of state funds for the educational support program increases by three percent (3%) or more over the prior fiscal year and shall decrease by ten percent (10%)

each time the total appropriation of state funds for the educational support program decreases as compared to the prior fiscal year. Provided however, that the percentage shall be no less than twenty percent (20%) and no greater than fifty percent (50%), and that the average amount of funding received per public charter school shall not exceed the average amount of funding received by each school district pursuant to the provisions of [section 33-906, Idaho Code](#).

For those public charter schools that do not receive facilities funds for all enrolled students, the school may submit to the state department of education a reimbursement claim for any costs for which facilities funds may be used. The state department of education shall reduce such claim by the greater of fifty percent (50%) or the percentage of the school's enrolled students for which the school receives facilities funds and shall pay the balance. Provided however, that the total reimbursements paid to a public charter school, in combination with any facilities stipend received by the school, shall not exceed the amount of facilities funds that would have been received by the school had the school received facilities funds for all enrolled students. For the purposes of this subsection, the term "real property" shall be used as defined in [section 63-201, Idaho Code](#).

(6) Payment schedule. The state department of education is authorized to make an advance payment of twenty-five percent (25%) of a public charter school's estimated annual apportionment for its first year of operation, and each year thereafter, provided the public charter school is serving more grades or at least ten percent (10%) more classes than the previous year, to assist the school with initial start-up costs or payroll obligations. For a public charter school entering its second or greater year of operations, the state department of education may require documentation establishing the need for such an advance payment, including comparative class schedules and proof of a commensurate increase in the number of employees.

(a) For a public charter school to receive the advance payment, the school shall submit its anticipated fall membership for each grade level to the state department of education by June 1.

(b) Using the figures provided by the public charter school, the state department of education shall determine an estimated annual apportionment from which the amount of the advance payment shall be

calculated. Advance payment shall be made to the school on or after July 1 but no later than July 31.

(c) All subsequent payments, taking into account the onetime advance payment made for the first year of operation, shall be made to the public charter school in the same manner as other traditional public schools in accordance with the provisions of [section 33-1009, Idaho Code](#).

A public charter school shall comply with all applicable fiscal requirements of law, except that the following provisions shall not be applicable to public charter schools: that portion of [section 33-1004, Idaho Code](#), relating to reduction of the administrative and instructional staff allowance and the pupil service staff allowance when there is a discrepancy between the number allowed and the number actually employed; and [section 33-1004E, Idaho Code](#), for calculation of district staff indices.

(7) Nothing in this chapter shall be construed to prohibit any private person or organization from providing funding or other financial assistance to the establishment or operation of a public charter school.

(8) Each public charter school shall pay an authorizer fee to its authorized chartering entity, to defray the actual documented cost of monitoring, evaluation and oversight, which, in the case of public charter schools authorized by the public charter school commission, shall include each school's proportional fee share of moneys appropriated from the public charter school authorizers fund to the public charter school commission, plus fifteen percent (15%). Provided however, that each public charter school's board of directors may direct up to ten percent (10%) of the calculated fee to pay membership fees to an organization or association that provides technical assistance, training and advocacy for Idaho public charter schools. Unless the authorized chartering entity declines payment, such fee shall be paid by March 15 of each fiscal year and shall not exceed the greater of:

(a) All state funds distributed to public schools on a support unit basis for the prior fiscal year, divided by the statewide number of public school students in average daily attendance in the first reporting period in the prior fiscal year; or

(b) The lesser of:

(i) The result of the calculation in paragraph (a) of this subsection, multiplied by four (4); or

(ii) One and one-half percent (1.5%) of the result of the calculation in paragraph (a) of this subsection, multiplied by the public charter school's average daily attendance in the first reporting period in the current fiscal year.

(9) Nothing in this chapter shall prevent a public charter school from applying for federal grant moneys or for career technical education funding of any source for any reason including, but not limited to, the instructional delivery method.

(10)(a) Each student in attendance at a public virtual school shall be funded based upon either the actual hours of attendance in the public virtual school on a flexible schedule, or the percentage of coursework completed, whichever is more advantageous to the school, up to the maximum of one (1) full-time equivalent student.

(b) All federal educational funds shall be administered and distributed to public charter schools, including public virtual schools, that have been designated as a local education agency (LEA), as provided in [section 33-5203\(8\), Idaho Code](#).

(11) Nothing in this section prohibits separate face-to-face learning activities or services. In order to be eligible for career technical education essential components funding, virtual schools may be required to offer some face-to-face instruction in order to meet industry standards, licensing requirements, work-based learning requirements, or other requirements set forth by the board.

(12) The provisions of [section 33-1021, Idaho Code](#), shall apply to public charter schools provided for in this chapter.

### **History.**

[I.C., § 33-5208](#), as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 5, p. 623; am. 2001, ch. 114, § 1, p. 405; am. 2002, ch. 109, § 1, p. 307; am. 2004, ch. 370, § 3, p. 1094; am. 2004, ch. 374, § 1, p. 1116; am. 2005, ch. 255, § 6, p. 782; am. 2005, ch. 376, § 8, p. 1201; am. 2006 (1st E.S.), ch. 1, § 13; am. 2007, ch. 350, § 7, p. 1028; am. 2009, ch. 284, § 3, p. 852; am. 2011, ch. 310, § 2, p. 878; am. 2012, ch. 188, § 5, p. 495; am. 2013, ch.

342, § 2, p. 900; am. 2013, ch. 343, § 9, p. 908; am. 2015, ch. 14, § 1, p. 18; am. 2015, ch. 305, § 1, p. 1204; am. 2016, ch. 271, § 9, p. 728; am. 2019, ch. 298, § 6, p. 881.

## **STATUTORY NOTES**

### **Cross References.**

Educational support program, § 33-1002.

Exceptional education report, § 33-1007.

Public charter school commission, § 33-5213.

### **Amendments.**

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 370 substituted “public charter school” for “charter school” throughout the section, and added the exception at the beginning of the introductory language and the proviso at the end of subsection (1).

The 2004 amendment, by ch. 374 added the third, fourth and fifth sentences of subdivision (4).

This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 255, § 6 added the ending to the first sentence in subsection (1) beginning with “and no public charter school.”

The 2005 amendment, by ch. 376, § 8, in subsection (8)(c) deleted “At the discretion of the board of directors, and subject to any specific limitations in its charter” at the beginning, inserted “charter schools, including public” before “virtual schools,” and substituted the ending beginning “that have been designated” for “that enroll students from multiple school districts in the same manner as an independent local education agency (LEA).”

The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “section 33-1002(4)” for “section 33-1002 6.” in the first sentence in subsection (1).

The 2007 amendment, by ch. 350, substituted “thirty (30)” for “twenty (20)” at the end of the first sentence in subsection (1).

The 2009 amendment, by ch. 284, in the introductory paragraph in subsection (4), substituted “students who are eligible for reimbursement of transportation costs under the provisions of this subsection and who reside more than one and one-half (1 ½) miles from the school” for “students living more than one and one-half (1 ½) miles from the school” in the third sentence, substituted “sixty percent (60%)” for “eighty percent (80%)” in the fifth sentence, substituted “shall reflect reimbursements of actual costs pursuant to [section 33-1006, Idaho Code](#)” for “shall reflect eighty-five percent (85%) of the actual cost” in the sixth sentence, and added the last sentence; and added subsections (4)(a) and (4)(b).

The 2011 amendment, by ch. 310, added subsection (10).

The 2012 amendment, by ch. 188, in subsection (4), deleted the former third sentence which read, “For charter schools in the initial year of operation, the petition shall include a proposal for transportation services with an estimated first year cost” and substituted “primary attendance area” for “attendance zone” in the last sentence of the introductory paragraph; deleted “[section 33-1003B, Idaho Code](#), relating to guaranteed minimum support” following “public charter schools” from the last sentence of subsection (5); and deleted former paragraph (8)(a), which contained information concerning dates that have already passed.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 342, updated the reference in the introductory language; added present subsections (5) and 8; and redesignated former subsections (5) through (7) as present subsections (6) through (8) and former subsections (7) through (10) as present subsections (9) through (12).

The 2013 amendment, by ch. 343, in subsection (5), substituted “is serving more grades or at least ten percent (10%) more classes than the previous year” for “has an increase of student population in any given year of twenty (20) students or more” in the next-to-last sentence, and added the



last sentence; and deleted “by the state board of education” following “designated” in paragraph (8)(b).

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 14, in subsection (8), deleted “all” preceding “moneys” and inserted “from the public charter school authorizers fund” following “appropriated” in the first sentence and substituted “March 15” for “February 15” in the last sentence.

The 2015 amendment, by ch. 305, inserted “and the pupil service staff allowance” near the middle of the last paragraph of subsection (6).

The 2016 amendment, by ch. 271, updated the reference at the end of paragraph (10)(b) to reflect the 2016 amendment of § 33-5203.

The 2019 amendment, by ch. 298, rewrote subsection (9), which formerly read: “Nothing in this chapter shall prevent a public charter school from applying for federal grant money”; and added the last sentence in subsection (11).

### **Legislative Intent.**

Section 4 of S.L. 2007, ch. 350 provided “It is the legislative intent that public school employee benefits paid by the state, pursuant to [Section 33-1004F, Idaho Code](#), be paid for all eligible employees that a school district or public charter school actually employs with its salary-based apportionment allotment, regardless of whether such employees are categorized as administrative, instructional or classified staff.”

### **Compiler’s Notes.**

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

The abbreviation enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.



Section 4 of S.L. 2004, ch. 370 declared an emergency. Approved April 1, 2004.

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014.”

### **33-5209. Enforcement — Revocation — Appeal. [Repealed.]**

Repealed by S.L. 2013, ch. 343, § 10, effective July 1, 2013.

#### **History.**

**I.C., § 33-5209**, as added by 1998, ch. 92, § 1, p. 330; am. 2001, ch. 65, § 1, p. 122; am. 2004, ch. 371, § 9, p. 1099; am. 2005, ch. 376, § 9, p. 1201; am. 2008, ch. 251, § 1, p. 737; am. 2009, ch. 160, § 2, p. 477; am. 2012, ch. 188, § 6, p. 495.

**33-5209A. Accountability.** — (1) Performance framework. The performance provisions within the performance certificate shall be based upon a performance framework that clearly sets forth the academic and operational performance indicators, measures and metrics that will guide the authorized chartering entity's evaluations of each public charter school. The performance framework shall include indicators, measures and metrics for, at a minimum:

(a) Student academic proficiency; (b) Student academic growth; (c) College and career readiness (for high schools); and (d) Board performance and stewardship, including compliance with all applicable laws, regulations and terms of the performance certificate.

(2) Measurable performance targets shall be set by each charter holder for each public charter school for which it holds a charter in conjunction with its authorized chartering entity and shall, at a minimum, require that each school meet applicable federal, state and authorized chartering entity goals for student achievement.

(3) The performance framework shall allow the inclusion of additional rigorous, valid and reliable indicators proposed by a charter holder to augment external evaluations of its performance, provided that the authorized chartering entity approves the quality and rigor of such proposed indicators, and that they are consistent with the purposes of this chapter.

(4) For each public charter school it oversees, the authorized chartering entity shall be responsible for analyzing and reporting all data from state assessments in accordance with the performance framework.

### **History.**

I.C., § 33-5209A, as added by 2013, ch. 343, § 11, p. 908; am. 2016, ch. 271, § 10, p. 728.

## **STATUTORY NOTES**

### **Amendments.**

The 2016 amendment, by ch. 271, substituted “charter holder for each public charter school for which it holds a charter” for “public charter school” in subsection (2); and, in subsection (3), substituted “charter holder” for “public charter school” and “proposed indicators” for “school-proposed school”.

**Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

**33-5209B. Charter renewals.** — (1) A charter may be renewed for successive five (5) year terms of duration. An authorized chartering entity may grant renewal with specific, written conditions for necessary improvements to a public charter school. Any such specific, written conditions shall state the date by which the conditions must be met.

(2) Following the initial three (3) year term, an authorized chartering entity may nonrenew or grant renewal for an additional five (5) years, based upon the performance of the public charter school on the performance indicators, measures and metrics contained in the performance certificate. Subsequent renewals shall be for a term of five (5) years.

(3) No later than November 15, the authorized chartering entity shall issue a public charter school performance report and charter renewal application guidance to any charter holder with a public charter school whose charter will expire the following year. The performance report shall summarize the public charter school's performance record to date, based upon the data required by this chapter and the performance certificate, and shall provide notice of any weaknesses or concerns determined by the authorized chartering entity concerning the public charter school that may jeopardize its position in seeking renewal, if not timely rectified. The charter holder shall have thirty (30) days to respond to the performance report and submit any corrections or clarifications for the report.

(4) The renewal application guidance shall, at a minimum, provide an opportunity for the charter holder to:

- (a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal; and
- (b) Describe improvements undertaken or planned for the school.

(5) The renewal application guidance shall include or refer explicitly to the criteria that will guide the authorized chartering entity's renewal decisions, which shall be based on independent fiscal audits and the performance framework set forth in the performance certificate.

(6) No later than December 15, the charter holder seeking renewal shall submit a renewal application to the authorized chartering entity pursuant to

the renewal application guidance issued by the authorized chartering entity. The authorized chartering entity shall vote on the renewal application no later than March 15.

(7) In making charter renewal decisions, every authorized chartering entity shall:

- (a) Ground its decisions in evidence of the school's performance over the term of the performance certificate in accordance with the performance framework set forth in the performance certificate;
- (b) Ensure that data used in making renewal decisions are available to the school and the public; and
- (c) Provide a public report summarizing the evidence basis for each decision.

(8) An authorized chartering entity must develop revocation and nonrenewal processes that:

- (a) Provide the charter holders with a timely notification of the prospect of revocation or nonrenewal and of the reasons for such possible closure, which shall be limited to failure to meet the terms of the performance certificate or the written conditions established pursuant to the provisions of subsection (1) of this section;
- (b) Allow the charter holders a reasonable amount of time in which to prepare a response;
- (c) Provide the charter holders with an opportunity to submit documents and give testimony challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose;
- (d) Allow the charter holders to be represented by counsel and to call witnesses on their behalf;
- (e) Permit the recording of such proceedings; and
- (f) After a reasonable period for deliberation, require a final determination to be made and conveyed in writing to the charter holders.

(9) An authorized chartering entity shall renew any charter in which the public charter school met all of the terms of its performance certificate at

the time of renewal. An authorized chartering entity may renew or nonrenew any charter in which the public charter school failed to meet one (1) or more of the terms of its performance certificate.

**History.**

**I.C., § 33-5209B**, as added by 2013, ch. 343, § 12, p. 908; am. 2016, ch. 271, § 11, p. 728.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 271, in subsection (3), inserted “charter holder with a” in the first sentence and substituted “charter holder” for “public charter school” in the last sentence; substituted “charter holder” for “public charter school” in the introductory paragraph of subsection (4); and substituted “charter holder” for “governing board of public charter school” in the first sentence of subsection (6).

**Effective Dates.**

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

**33-5209C. Enforcement — Revocation — Appeal.** — (1) An authorized chartering entity shall continually monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the performance certificate. Every authorized chartering entity shall have the authority to conduct or require oversight activities that enable the authorized chartering entity to fulfill its responsibilities pursuant to the provisions of this chapter, including conducting appropriate inquiries and investigations, as long as those activities are consistent with the intent of this chapter, adhere to the terms of the performance certificate and do not unduly inhibit the autonomy granted to public charter schools.

(2) Each authorized chartering entity shall annually publish and make available to the public a performance report for each public charter school it oversees, in accordance with the performance framework set forth in the performance certificate and [section 33-5209A, Idaho Code](#). The authorized chartering entity may require each public charter school it oversees to submit an annual report to assist the authorized chartering entity in gathering complete information about each school consistent with the performance framework. Each public charter school shall publish its annual performance report on the school's website.

(3) If an authorized chartering entity has reason to believe that a public charter school cannot remain fiscally sound for the remainder of its certificate term, it shall provide the state department of education with written notification of such concern. Upon receiving such notification, the state department of education shall have the authority to modify the percentage of the total appropriation to be paid to the public charter school pursuant to the provisions of [section 33-1009\(1\), Idaho Code](#), such that equal percentages are paid on each of the prescribed dates. If documents filed with an authorized chartering entity pursuant to [section 33-5206\(7\), Idaho Code](#), establish that a public charter school that is not a virtual school and that has been open for more than two (2) years had less than fifteen (15) days' worth of cash on hand on June 30 of the current calendar year, then by November 30 of that year the authorized chartering entity shall notify the school that the school has until June 30 of the subsequent year to cure



the deficiency. If on June 30 of the subsequent year the school again has less than fifteen (15) days' worth of cash on hand, then by November 30 of that year the authorized chartering entity shall begin revocation proceedings pursuant to subsection (7) of this section.

(4) If an authorized chartering entity has reason to believe that a charter holder or public charter school has violated any provision of law, it shall notify the charter holder and the entity responsible for administering said law of the possible violation.

(5) If an authorized chartering entity revokes or does not renew a charter, the authorized chartering entity shall clearly state, in a resolution of its governing board, the reasons for the revocation or nonrenewal.

(6) Within fourteen (14) days of taking action to renew, not renew or revoke a charter, the authorized chartering entity shall report to the state board of education the action taken and shall provide a copy of the report to the charter holder at the same time that the report is submitted to the state board of education. The report shall include a copy of the authorized chartering entity's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the requirements set forth in this chapter.

(7) A charter may be revoked by the authorized chartering entity if the public charter school has failed to meet any of the specific, written conditions for necessary improvements established pursuant to the provisions of [section 33-5209B\(1\), Idaho Code](#), or has failed to cure the fifteen (15) days' worth of cash on hand deficiency pursuant to subsection (3) of this section, by the dates specified. Revocation may not occur until the charter holder has been afforded a public hearing, unless the authorized chartering entity determines that the continued operation of the public charter school presents an imminent public safety issue, in which case the charter may be revoked immediately. Public hearings shall be conducted by the authorized chartering entity or such other person or persons appointed by the authorized chartering entity to conduct public hearings and receive evidence as a contested case in accordance with the provisions of [section 67-5242, Idaho Code](#). Notice and opportunity to reply shall include, at a minimum, written notice setting out the basis for consideration of revocation, a period of not less than thirty (30) days within which the

charter holder can reply in writing, and a public hearing within thirty (30) days of the receipt of the written reply.

(8) A decision to revoke or nonrenew a charter or to deny a revision of a charter may be appealed directly to the state board of education. With respect to such appeal, the state board of education shall substantially follow the procedure as provided in [section 33-5207\(5\) \(b\), Idaho Code](#). In the event the state board of education reverses a decision of revocation or nonrenewal, the charter holder subject to such action shall then be placed under the chartering authority of the public charter school commission.

### **History.**

[I.C., § 33-5209C](#), as added by 2013, ch. 343, § 13, p. 908; am. 2016, ch. 271, § 12, p. 728; am. 2020, ch. 287, § 1, p. 832.

## **STATUTORY NOTES**

### **Cross References.**

Public charter school commission, § 33-5213.

State board of education, § 33-101 et seq.

State department of education, § 33-125.

### **Amendments.**

The 2016 amendment, by ch. 271, in subsection (4), inserted “charter holder or” preceding the first occurrence of “public charter school” and substituted “charter holder” for the second occurrence of “public charter school”; and substituted “charter holder” for “public charter school” in the first sentence of subsection (6), the second and fourth sentences in subsection (7), and the last sentence in subsection (8).

The 2020 amendment, by ch. 287, added the last two sentences in subsection (3) and inserted “or has failed to cure the fifteen (15) days’ worth of cash on hand deficiently pursuant to subsection (3) of this section” near the end of the first sentence in subsection (7).

### **Effective Dates.**

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of

this act shall be in full force and effect on and after July 1, 2013.”

**33-5210. Application of school law — Accountability — Exemption from state rules.** — (1) All public charter schools are under the general supervision of the state board of education.

(2) Every authorized chartering entity that approves a charter shall be responsible for ensuring that each public charter school program approved by that authorized chartering entity meets the terms of the charter, complies with the general education laws of the state unless specifically directed otherwise in this chapter, and operates in accordance with the state educational standards of thoroughness pursuant to [section 33-1612, Idaho Code](#).

(3) Each public charter school shall comply with the financial reporting requirements of section 33-701, subsections 5. through 10., Idaho Code, in the same manner as those requirements are imposed upon school districts and with laws governing safety including, but not limited to, sections 33-122 and 33-130, Idaho Code, and chapter 2, title 33, Idaho Code, and rules promulgated thereunder.

(4) Other than as specified in this section, each public charter school is exempt from rules governing school districts, which rules have been promulgated by the state board of education, with the exception of state rules relating to:

- (a) Teacher certification as necessitated by the provisions of section 33-5206(3) and (4), Idaho Code;
- (b) Accreditation of the school as necessitated by the provisions of [section 33-5206\(12\), Idaho Code](#);
- (c) Qualifications of a student for attendance at an alternative school as necessitated by the provisions of [section 33-5208\(3\), Idaho Code](#);
- (d) Rules promulgated pursuant to [section 33-1612, Idaho Code](#); and
- (e) All rules that specifically pertain to public charter schools promulgated by the state board of education.

**History.**

I.C., § 33-5210, as added by 1998, ch. 92, § 1, p. 330; am. 1999, ch. 244, § 6, p. 623; am. 2000, ch. 278, § 1, p. 901; am. 2002, ch. 110, § 1, p. 309; am. 2004, ch. 371, § 10, p. 1099; am. 2005, ch. 376, § 10, p. 1201; am. 2012, ch. 188, § 7, p. 495; am. 2016, ch. 271, § 13, p. 728; am. 2017, ch. 249, § 4, p. 607.

## STATUTORY NOTES

### Cross References.

Public charter school commission, § 33-5213.

State board of education, § 33-101 et seq.

### Amendments.

The 2012 amendment, by ch. 188, added the last sentence in paragraph (4)(e).

The 2016 amendment, by ch. 271, inserted “public” near the beginning of subsection (3); in subsection (4), added “Other than as specified in this section” and deleted “otherwise” preceding “exempt” in the introductory paragraph, deleted “Waiver of” at the beginning of paragraph (a), added paragraph (e), redesignated former paragraph (e) as (f), and deleted the former last sentence in paragraph (f), which read: “Public charter schools authorized by the public charter school commission are also subject to rules promulgated by the public charter school commission.”

The 2017 amendment, by ch. 249, added “and with laws governing safety including, but not limited to, sections 33-122 and 33-130, Idaho Code, and chapter 2, title 33, Idaho Code, and rules promulgated thereunder” at the end of subsection (3); in subsection (4), substituted “section 33-5206(3) and (4), Idaho Code” for “section 33-5205(3)(g), Idaho Code” at the end of paragraph (a), substituted “section 33-5206(12), Idaho Code” for “section 33-5205(3)(e), Idaho Code” at the end of paragraph (b), and deleted former paragraph (d), which read: “Requirements that all employees of the school undergo a criminal history check as required by section 33-130, Idaho Code”, redesignating former paragraphs (e) and (f) as present paragraphs (d) and (e).

### Compiler’s Notes.

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**Effective Dates.**

Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

**33-5211. Technical support and information.** — (1) Upon request, the state department of education shall provide technical assistance to persons or authorized chartering entities preparing or reviewing charter petitions or performance certificates, and to existing public charter schools in the same manner as such assistance is provided to traditional public schools and school districts.

(2) Upon request, the state department of education shall provide the following information concerning a public charter school whose petition has been approved:

- (a) The public charter school's charter and performance certificate;
- (b) The annual audit performed at the public charter school pursuant to the public charter school petition; and
- (c) Any written report by the state board of education to the legislature reviewing the educational effectiveness of public charter schools.

(3) At least one (1) person among a group of petitioners of a prospective public charter school shall attend, in person or electronically, a public charter school workshop offered by the state department of education. The state department of education shall provide notice of dates and locations when workshops will be held, shall make earlier recorded workshops available electronically and shall provide proof of attendance to workshop attendees.

### **History.**

**I.C., § 33-5211**, as added by 1998, ch. 92, § 1, p. 330; am. 2001, ch. 188, § 1, p. 651; am. 2004, ch. 371, § 11, p. 1099; am. 2012, ch. 188, § 8, p. 495; am. 2013, ch. 343, § 14, p. 908; am. 2017, ch. 249, § 5, p. 607.

## **STATUTORY NOTES**

### **Cross References.**

State department of education, § 33-125.

### **Amendments.**

The 2012 amendment, by ch. 188, substituted “Technical support and” for “Assistance with petitions” in the section heading; added “and to existing public charter schools in the same manner as such assistance is provided to traditional public schools and school districts” at the end of subsection (1); and added subsections (3) and (4).

The 2013 amendment, by ch. 343, substituted “charter and performance certificate” for “petition” at the end of paragraph (2)(a).

The 2017 amendment, by ch. 249, in subsection (1), added “Upon request” at the beginning and substituted “persons or authorized chartering entities preparing or reviewing charter petitions or performance certificates” for “persons or groups preparing or revising charter petitions” near the middle; in subsection (3), inserted “in person or electronically” near the middle of the first sentence, inserted “shall make earlier recorded workshops available electronically” near the end of the second sentence, and deleted the former last sentence, which read: “Such proof shall be submitted by the petitioners to an authorized chartering entity along with the charter petition”; and deleted former subsection (4), which read: “Prior to submission of a petition for a new or conversion public charter school to an authorized chartering entity, the state department of education must conduct a sufficiency review of the petition and provide to the petitioners, in writing, the findings of such review”.

### **Compiler’s Notes.**

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

Section 17 of S.L. 2013, ch. 343 provided: “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”



**33-5212. School closure and dissolution.** — (1) Prior to any public charter school closure decision, an authorized chartering entity shall have developed a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property and assets in accordance with the requirements of this chapter. The protocol shall specify tasks, timelines and responsible parties, including delineating the respective duties of the school and the authorized chartering entity. In the event of a public charter school closure for any reason, the authorized chartering entity shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol. The closing school's board of directors shall be responsible for executing the school's closure.

(2) In the event of a public charter school closure for any reason, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, including any tax, public employee retirement system and other employee benefit obligations, then to creditors of the school, and then to the authorized chartering entity in the case of a public charter school authorized by the board of a local school district. In the case of a public charter school authorized by any other authorized chartering entity, any remaining assets shall be distributed to the public school income fund. Assets purchased using federal funds shall be returned to the authorized chartering entity for redistribution among other public charter schools. If the assets of the school are insufficient to pay all parties to whom the school owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

#### **History.**

I.C., § 33-5212, as added by 2013, ch. 343, § 15, p. 908.

### **STATUTORY NOTES**

#### **Cross References.**

Public employee retirement system, § 59-1301 et seq.

Public school income fund, § 33-903.

**Prior Laws.**

Former § 33-5212, which comprised I.C., § 33-5212, as added by 1998, ch. 92, § 1, p. 330; am. 2001, ch. 188, § 2, p. 651, was repealed by S.L. 2009, ch. 11, § 12.

**Effective Dates.**

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

**33-5213. Public charter school commission.** — (1) There is hereby created an independent public charter school commission, referred to hereinafter as the commission, to be located in the office of the state board of education, pursuant to section 33-105, Idaho Code. It shall be the responsibility and duty of the executive director of the state board of education, or his designee, acting at the direction of the commission to administer and enforce the provisions of this chapter, and the director or his designee shall serve as secretary to the commission.

(2) The public charter school commission shall adopt policies, subject to law, regarding the governance and administration of the commission and make recommendations to the state board of education regarding the oversight of public charter schools.

(3) The commission shall be composed of seven (7) members:

(a) Three (3) members shall be appointed by the governor, subject to the advice and consent of the senate;

(b) Two (2) members shall be appointed by the speaker of the house of representatives; and

(c) Two (2) members shall be appointed by the president pro tempore of the senate.

Commissioner appointments made pursuant to this section prior to July 1, 2013, shall remain valid through the duration of the term to which each commissioner was appointed. To establish a transition to the appointing authority structure contained in this subsection, the first four (4) appointments available on or after July 1, 2013, shall be made in an alternating sequence for each appointment by the speaker of the house of representatives, the president pro tempore of the senate, and the governor. Notwithstanding this sequence of appointments, at no time may any appointing authority appoint more members of the commission than permitted under this subsection. Subsequent appointments shall be made by the same appointing authority that originally appointed the commissioner whose term expired.

(4) The term of office for commission members shall be four (4) years. In making such appointments, the appointing authorities shall consider regional balance. Members appointed to the commission shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, assessment, curriculum and instruction and public education law. All members of the commission shall have demonstrated understanding of and commitment to charter schools as a strategy for strengthening public education. Members of the commission shall hold office until the expiration of the term to which the member was appointed and until a successor has been duly appointed, unless sooner removed for cause by the appointing authority. Whenever a vacancy occurs, the appointing authority shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(5) All members of the commission shall be citizens of the United States and residents of the state of Idaho for not less than two (2) years.

(6) The members of the commission shall, at their first regular meeting following the effective date of this act, and every two (2) years thereafter, elect, by a majority vote of the members of the commission, a chairman and a vice-chairman. The chairman shall preside at meetings of the commission, and the vice-chairman shall preside at such meetings in the absence of the chairman. A majority of the members of the commission shall constitute a quorum. The commission shall meet at such times and places as determined to be necessary and convenient, or at the call of the chair.

(7) Each member of the commission not otherwise compensated by public moneys shall be compensated as provided in [section 59-509\(h\), Idaho Code](#).

### **History.**

[I.C., § 33-5213](#), as added by 2004, ch. 371, § 12, p. 1099; am. 2012, ch. 188, § 9, p. 495; am. 2013, ch. 343, § 16, p. 908; am. 2014, ch. 29, § 1, p. 43; am. 2017, ch. 44, § 1, p. 65; am. 2017, ch. 267, § 1, p. 663.

## **STATUTORY NOTES**

### **Cross References.**

State board of education, § 33-101 et seq.

## **Amendments.**

The 2012 amendment, by ch. 188, rewrote the first sentence in the last paragraph in subsection (3), deleting provisions relating to the staggered terms of the initial members of the commission.

The 2013 amendment, by ch. 343, rewrote subsection (3), which previously read: “The commission shall be composed of seven (7) members: (a) Three (3) members shall be current or former members of boards of directors of Idaho public charter schools and shall be appointed by the governor, subject to the advice and consent of the senate; provided however, that no current board member of a public charter school authorized by the commission shall be eligible for appointment; (b) Three (3) members shall be current or former trustees of an Idaho school district and shall be appointed by the governor, subject to the advice and consent of the senate; and (c) One (1) member shall be a member of the public at large not directly associated with the Idaho public education system and shall be appointed by the governor, subject to the advice and consent of the senate. The term of office for commission members shall be four (4) years. In making such appointments, the governor shall consider regional balance. Members of the commission shall hold office until the expiration of the term to which the member was appointed and until a successor has been duly appointed, unless sooner removed for cause by the appointing authority. Whenever a vacancy occurs, the appointing authority shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.”

The 2014 amendment, by ch. 29, inserted “or his designee” in the second sentence of subsection (1); in subsection (2), substituted “policies” for “rules” and added “and make recommendations to the state board of education regarding the oversight of public charter schools” at the end; inserted the present subsection (4) designation; and redesignated former subsections (4) through (6) as present subsections (5) through (7).

This section was amended by two 2017 acts which appear to be compatible and have been compiled together.

The 2017 amendment, by ch. 44, in the undesignated paragraph following paragraph (3)(c), substituted “representatives, the president pro tempore of the senate, and the governor” for “representatives and, the

president pro tempore of the senate, followed by three (3) appointments by the governor” at the end of the second sentence, and added the third sentence.

The 2017 amendment, by ch. 267, in subsection (4), deleted the former fifth sentence, which read: “No commissioner shall serve more than two (2) consecutive four (4) year terms”.

### **Compiler’s Notes.**

The phrase “the effective date of this act” in the first sentence in subsection (6) refers to the effective date of S.L. 2004, Chapter 371, which was effective April 1, 2004.

Section 13 of S.L. 2004, ch. 371 read: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 14 of S.L. 2004, ch. 371 declared an emergency. Approved April 1, 2004.

Section 17 of S.L. 2013, ch. 343 provided that “Section 9 of this act shall be in full force and effect on and after June 1, 2014. All other sections of this act shall be in full force and effect on and after July 1, 2013.”

**33-5214. Public charter school authorizers fund.** — There is hereby created in the state treasury a fund to be known as the “Public Charter School Authorizers Fund,” hereinafter referred to as “the fund.” All authorizer fees paid pursuant to section 33-5208(8), Idaho Code, for public charter schools under the governance of the public charter school commission shall be deposited in the fund. Moneys in the fund shall be appropriated to defray the commission’s cost of operations and the state department of education’s cost of reviewing, approving and overseeing any charter school authorizers requiring department approval.

**History.**

I.C., § 33-5214, as added by 2013, ch. 342, § 3, p. 900.

**STATUTORY NOTES**

**Cross References.**

Public charter school commission, § 33-5213.

State department of education, § 33-125.

**33-5215. Career technical regional public charter school.** — (1) A career technical regional public charter school is hereby declared to be a public charter school and as such, the provisions of chapter 52, title 33, Idaho Code, shall apply to each career technical regional public charter school in the same manner and to the same extent as the provisions of charter school law apply to other public charter schools, with the exception of certain conditions and applications as specifically provided in this section.

(2) In addition to the approval provisions of this chapter, approval of a career technical regional public charter school by an authorized chartering entity shall not be final until the petition has also been reviewed by the division of career technical education.

(3) Funding for a career technical regional public charter school shall be the same as provided in [section 33-5208, Idaho Code](#), except that:

(a) The salary-based apportionment for a career technical regional public charter school shall be the statewide average for public charter schools. Such salary-based apportionment may be used for payment of contracted services or for direct hire of staff;

(b) The board of directors may contract for the services of certificated and noncertificated personnel, to procure the use of facilities and equipment, and to purchase materials and equipment, which in the judgment of the board of directors is necessary or desirable for the conduct of the business of the career technical regional public charter school; and

(c) Transportation support shall be paid to the career technical regional public charter school in accordance with the provisions of chapter 15, title 33, Idaho Code.

(4) A career technical regional public charter school shall provide assurances in state attendance reports that it has verified attendance reports, which generate ADA with its participating school districts, to make certain that the districts and the charter school do not duplicate enrollment or ADA claims.



**History.**

I.C., § 33-5215, as added by 2007, ch. 246, § 2, p. 724; am. 2016, ch. 25, § 36, p. 35; am. 2016, ch. 245, § 10, p. 642.

**STATUTORY NOTES****Cross References.**

Division of career technical education, § 33-2205.

**Amendments.**

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 25, substituted “career technical” for “professional-technical” throughout the section.

The 2016 amendment, by ch. 245, deleted “index” following “statewide average” in the first sentence of paragraph (3)(a).

**33-5216. Public postsecondary institutions — Public charter high schools. [Null and void.]**

Null and void, pursuant to rejection of Proposition 3 on November 6, 2012.

**History.**

I.C., § 33-5216, as added by 2011, ch. 247, § 16, p. 669; am. 2011, ch. 300, § 8, p. 857.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was enacted by S.L. 2011, ch. 247, effective April 8, 2011. Session Laws 2011, Chapter 247 was the subject of Proposition 3 at the general election on November 6, 2012. The proposition was rejected by the electorate. Thus, the 2011 enactment of this section, and the amendment by S.L. 2011, Chapter 300, became null and void.

**33-5217. Public charter school debt reserve.** — (1) There is hereby created the public charter school debt reserve to assist qualifying charter schools in obtaining favorable financing for facility improvements and construction. A public charter school seeking to use the public charter school debt reserve must receive approval from the Idaho housing and finance association pursuant to the criteria set forth in this section.

(2) A public charter school shall be qualified to use the public charter school debt reserve only upon satisfaction of the following conditions: (a) The public charter school must demonstrate it has obtained one (1) of the following: (i) A letter of commitment from a national or state chartered financial institution; (ii) A letter of commitment from a nonprofit corporation;

(iii) A letter of commitment from a community development financial institution; or (iv) A letter of commitment from a qualified underwriter or an investment firm; (b) The public charter school must provide annual budgets and cash flow statements and must demonstrate satisfaction of each of the following criteria: (i) Projected future budgets, cash flows and operating reserves greater than sixty (60) days of cash on hand to support a debt service coverage greater than 1.20x; (ii) Cost to operate facility, including debt service, occupancy cost and operating expenses, not to exceed twenty percent (20%) of revenue; (iii) Audited financial statements with unqualified opinions for the prior three (3) years; and (iv) Certification from a school administrator that projected future budgets and cash flows are based on reasonable assumptions related to level or increasing projected enrollment or waitlist and projected total income, including any matching funds and donations contingent on receipt of a loan under this section; and (c) The public charter school must obtain approval for issuance by the Idaho housing and finance association to act as a conduit issuer.

(3) Public charter schools that satisfy the requirements set forth in subsection (2) of this section shall receive approval from the Idaho housing and finance association to rely on the public charter school debt reserve for assistance in obtaining favorable financing for facility improvements and

construction, so long as sufficient moneys exist pursuant to subsection (4) of this section. Eligible schools shall receive approval on a first-come basis according to date of completed application, in an amount not to exceed twenty-four (24) months of principal and interest payments.

(4) There is hereby established in the state treasury the public charter school debt reserve fund that shall consist of moneys made available through appropriations, fees, grants, gifts or any other source to fulfill the purposes of this section. Moneys in the fund are hereby continuously appropriated for the purposes of this section, and shall only be expended for the purposes stated herein. Qualifying schools annually shall pay an amount equal to ten (10) basis points of the principal amount of the debt for which it qualified to use the public charter school debt reserve, which shall be deposited into the public charter school debt reserve fund.

(5) Subject to the limitations of subsection (3) of this section, if a qualified public charter school defaults on an outstanding debt for which the Idaho housing and finance association has made the debt reserve available, and there is no other money available to the charter school to make the payment, money shall be withdrawn from the public charter school debt reserve fund to pay the principal, redemption price or interest on the outstanding debt. Upon certification by the Idaho housing and finance association to the superintendent of public instruction, payment shall be made from the public charter school debt reserve fund toward the outstanding debt.

(6) If money has been withdrawn from the public charter school debt reserve fund for a public charter school pursuant to subsection (5) of this section, then the superintendent of public instruction shall redirect the money from such public charter school's allocation of facilities funds pursuant to [section 33-5208\(5\), Idaho Code](#). Any money redirected shall be according to a determined time and sequence of payments, over a period of years until the amount so withdrawn has been repaid to the fund so long as the redirection does not cause an event of default under the agreement(s) governing the public charter school's obligation for which the debt reserve was made available, excepting that any money withdrawn during any fiscal year shall be repaid within ten (10) years.

### **History.**

I.C., § 33-5217, as added by 2015, ch. 343, § 1, p. 1296.

## **STATUTORY NOTES**

### **Cross References.**

Idaho housing and finance association, § 67-6201 et seq,

State superintendent of public instruction, § 67-1501 et seq.

### **Effective Dates.**

Section 2 of S.L. 2015, ch. 343 provided that the act should take effect on and after July 1, 2016.

**33-5218. Public charter school facilities program.** — (1) Legislative intent. It is the intent of the legislature, in recognition that providing Idaho students with a thorough education is an essential public purpose of the state, to support public charter schools by providing a mechanism to obtain favorable financing on bonds so that less money is obligated toward interest payments and more money remains in public charter schools for the benefit of Idaho's students. There is hereby created the public charter school facilities program to assist qualifying charter schools in obtaining favorable financing on bonds for facility improvements and construction.

(2) Eligibility. A public charter school seeking to use the public charter school facilities program must receive approval from the Idaho housing and finance association pursuant to requirements for issuance of nonprofit facility bonds and to satisfaction of the criteria set forth in this section. To qualify, a public charter school must submit the following documentation to the Idaho housing and finance association:

- (a) A letter of commitment from one (1) of the following:
  - (i) A national or state chartered financial institution;
  - (ii) A community development financial institution; or
  - (iii) A qualified underwriter or an investment firm;
- (b) Evidence that the public charter school has been in academic, operational, and financial good standing according to its authorizer for each of the previous three (3) years;
- (c) Annual budgets and cash flow statements projecting that the cost to operate the proposed facility, including future debt service, future occupancy cost, and facility operating expenses, will not exceed twenty percent (20%) of ongoing revenues;
- (d) Evidence that the school has operating reserves greater than sixty (60) days of cash on hand and a debt service coverage ratio equal to or greater than one and two-tenths (1.2);
- (e) An audit opinion or opinions demonstrating:

- (i) An unqualified audit opinion, or a qualified opinion qualified only on the basis of not reporting the actuarial value of the PERSI sick leave plan pursuant to statement no. 45 of the governmental accounting standards board;
  - (ii) An audit devoid of significant findings and conditions, material weakness, or significant internal control weakness; and
  - (iii) An audit that does not include a going concern disclosure in the notes or an explanatory paragraph within the audit report for three (3) consecutive years;
- (f) Certification from a public charter school's board chair or treasurer that projected future budgets and cash flows are based on reasonable assumptions related to level or increasing projected enrollment or waitlist and projected total income, including any matching funds and donations contingent on receipt of a loan under this section;
- (g) Evidence of strong academic results, including above state average growth or proficiency on the Idaho standards achievement test; and
- (h) Any additional information requested by the Idaho housing and finance association.

(3) Approval to participate. Upon receipt of documentation satisfying the criteria set forth in subsection (2) of this section, the Idaho housing and finance association shall notify the public charter school and the state treasurer that the school has been approved to participate in the public charter school facilities program if:

- (a) The public charter school complies with the requirements set forth in subsection (4) of this section; and
- (b) The public charter school's participation would not cause a violation of the limitations set forth in subsection (8) of this section.

Additional requirements and security interests may be imposed by agreement of the school and bondholder or trustee.

(4) Restricted debt service reserve account.

- (a) A school participating in the public charter school facilities program shall agree to have deposited a minimum of twelve (12) months' payment

on principal and interest in a restricted debt service reserve account established and held by the bondholder or trustee.

(b) Except as provided in paragraph (c) of this subsection, money in a participating public charter school's restricted debt service reserve account may not be withdrawn if the amount withdrawn would reduce the level of money in the account to less than twelve (12) months' payment on principal and interest.

(c) As long as applicable bonds issued under the facilities program remain outstanding, money in a restricted debt service reserve account may be withdrawn in an amount that would reduce the level to less than twelve (12) months' payment on principal and interest, if the money is withdrawn for the purpose of:

(i) Paying the principal, redemption price, or interest on a bond when due if the state payments intercepted pursuant to subsection (5) of this section, plus funded grants and other revenues pledged by the participating public charter school for payment of the bond, are insufficient to make the payment; or

(ii) Paying any redemption premium required to be paid when the bonds are redeemed prior to maturity if no bonds will remain outstanding.

(5) Intercept. As a requirement to participate in the public charter school facilities program, a participating public charter school shall provide a directive to the Idaho department of education that all payments to the school pursuant to the state educational support program shall be paid directly to the bond trustee to set aside funds in accordance with the bond indenture. All remaining funds shall be forwarded to the public charter school. The payment directive required in this subsection may not be revoked or amended.

(6) Public charter school facilities program fund. There is hereby established in the state treasury the public charter school facilities program fund, which shall consist of moneys made available through appropriations, fees, grants, gifts, or any other source to fulfill the purposes of this section. Moneys in the fund are hereby continuously appropriated for the purposes of this section and shall only be expended for the purposes stated herein.



Any interest earned on the investment of idle moneys in the public charter school facilities program fund shall be returned to the public charter school facilities program fund. Schools participating in the public charter school facilities program shall pay a onetime fee in an amount equal to one-half percent (0.5%) of par at the time of issuance and an annual fee in an amount equal to seventy-five thousandths percent (0.075%) on the outstanding balance, which shall be deposited in the public charter school facilities program fund.

(7) Nonpayment.

(a) If a public charter school participating in the public charter school facilities program has defaulted on its obligation to pay, a draw on its restricted debt service reserve account shall be made, then the following shall occur:

(i) The bond trustee shall exercise its remedies under the bond indenture and loan agreement.

(ii) Within ten (10) days following the withdrawal from the restricted debt service account, the bond holder or trustee shall notify the Idaho housing and finance association, the state treasurer, and the state controller of the shortfall in the school's restricted debt service reserve account.

(iii) Within fifteen (15) days of the notice provided pursuant to subparagraph (ii) of this paragraph, the controller shall transfer, from the public charter school facilities program fund set forth in subsection (6) of this section, to the public school income fund and then to the school's restricted debt service reserve account an amount equal to one (1) month's interest on the bonds based on the interest payments for which the draw on the restricted debt service reserve account occurred. Moneys transferred to the public school income fund pursuant to this subparagraph shall be continuously appropriated for such purposes.

(iv) By December 1 of each year, the treasurer shall submit to the governor a letter certifying the amount, if any, required to restore amounts on deposit in the restricted debt service reserve accounts of participating public charter schools and the public charter school facilities program fund. The governor shall send to the legislature a

statement of the expenditure of moneys from the public charter school facilities program fund as specified in [section 8, article IV of the Idaho constitution](#) and report the amount needed to restore funds in the restricted debt service reserve accounts to the amount required in subsection (4)(b) of this section. The legislature may appropriate money to restore amounts on deposit in the restricted debt service reserve account of a defaulting public charter school to the amounts required in subsection (4)(b) of this section or to redeem all outstanding bonds issued for a defaulting public charter school, the source of which may be the public charter school facilities program fund or any other available funds. The legislature may also appropriate money to restore amounts withdrawn from the public charter school facilities program fund.

(b) Repayment. If money has been withdrawn from the public charter school facilities program fund pursuant to paragraph (a) of this subsection, the school shall repay the fund from the school's allocation of facilities funds pursuant to [section 33-5208\(5\), Idaho Code](#), at a time agreed to by the superintendent of public instruction over a period of years until the amount so withdrawn has been repaid to the public charter school facilities program fund, as long as the repayment does not cause an event of default on a facility lease or loan.

(8) Limitations.

(a) Bonds issued for the benefit of public charter schools using the public charter school facilities program shall not be indebtedness of the state, but are special obligations payable solely from:

(i) Revenues or other funds pledged by the qualifying public charter school; and

(ii) Amounts appropriated by the legislature pursuant to subsection (7) of this section.

(b) The Idaho housing and finance association may not use the public charter school facilities program when issuing bonds for a public charter school under the facilities program if the total par amount outstanding under the facilities program, plus the par amount of the bonds to be issued, would exceed the percentage of all Idaho public school students

attending public charter schools multiplied by the par amount of the bonds guaranteed under the Idaho school bond guaranty act.

**History.**

I.C., § 33-5218, as added by 2019, ch. 291, § 1, p. 861.

**STATUTORY NOTES**

**Cross References.**

Idaho housing and finance association, § 67-6201 et seq.

Idaho school bond guaranty act, § 33-5301 et seq.

Public school income fund, § 33-903.

Superintendent of public instruction, § 67-1501 et seq.

State controller, § 67-1001 et seq.

State department of education, § 33-125.

State treasurer, § 67-1201 et seq.

**Compiler's Notes.**

For a summary of statement no. 45 of the governmental accounting standards board, referred to in paragraph (2)(e)(i), see <https://www.gasb.org/st/summary/gstsm45.html>.

For further information of the Idaho standards achievement test, referred to in paragraph (2)(g), see <https://sde.idaho.gov/assessment/isat-cas>.



## **CHAPTER 53**

### **IDAHO SCHOOL BOND GUARANTY ACT**

Section.

33-5301. Title.

33-5302. Definitions.

33-5303. State's guaranty — Monitoring of financial solvency contract with bondholders — Guaranty — Limitation as to certain refunded bonds.

33-5304. Program eligibility — Option to forego [forgo] guaranty.

33-5305. State to monitor fiscal solvency of school districts — Duties of state treasurer and state superintendent of public instruction.

33-5306. Paying agent to provide notice — State treasurer to execute transfer to paying agents — Effect of transfer.

33-5307. State financial assistance intercept mechanism — Duties of state treasurer and attorney general — Interest and penalty provisions.

33-5308. Backup liquidity arrangements.

33-5308A. State notes issued to finance default avoidance program.

33-5309. Unlimited sales tax receipts pledge — State controller duties.

33-5310. Credit enhancement program.

**33-5301. Title.** — This chapter shall be known as the “Idaho School Bond Guaranty Act.”

**History.**

**I.C., § 33-5301**, as added by 1999, ch. 328, § 1, p. 840.

**STATUTORY NOTES**

**Effective Dates.**

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

**33-5302. Definitions.** — (1) “Board” means the board of trustees of a school district, including a specially chartered district, existing now or later under the laws of the state.

(2) “Bond” means any general obligation bond or refunding bond issued after the effective date of this chapter.

(3) “Default avoidance program” means the school bond guaranty program established by this chapter.

(4) “General obligation bond” means any bond, note, warrant, certificate of indebtedness, or other obligation of a board payable in whole or in part from revenues derived from property taxes and that constitutes an indebtedness within the meaning of any applicable constitutional or statutory debt limitation.

(5) “Paying agent” means the corporate paying agent selected by the board for a bond issue who is: (a) Duly qualified; and

(b) Acceptable to the state treasurer.

(6) “Public school guarantee fund” means the fund described in [section 2, article VIII, of the constitution](#) of the state of Idaho and [section 33-5309, Idaho Code](#).

(7) “Refunding bond” means any general obligation bond issued by a board for the purpose of refunding its outstanding general obligation bonds.

(8) “School district” means any school district, including a specially chartered district, existing now or later under the laws of the state.

### **History.**

[I.C., § 33-5302](#), as added by 1999, ch. 328, § 1, p. 840.

## **STATUTORY NOTES**

### **Cross References.**

State treasurer, § 67-1201 et seq.

### **Compiler’s Notes.**

The phrase “the effective date of this chapter” in subsection (2) refers to the effective date of S.L. 1999, Chapter 328, which was effective March 24, 1999.

**Effective Dates.**

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.



**33-5303. State's guaranty — Monitoring of financial solvency contract with bondholders — Guaranty — Limitation as to certain refunded bonds. —**

(1)(a) The state of Idaho pledges to and agrees with the holders of any bonds that the state will not alter, impair, or limit the rights vested by the default avoidance program with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged.

(b) Notwithstanding paragraph (a) of this subsection, nothing contained in this chapter precludes an alteration, impairment, or limitation if adequate provision is made by law for the protection of the holders of the bonds.

(c) Each school district may refer to this pledge and undertaking by the state in its bonds.

(2)(a) The sales tax of the state is pledged to guarantee full and timely payment of the principal of, either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment, and interest on, refunding bonds issued on and after March 1, 1999, for voter-approved bonds which were voted on by the electorate prior to March 1, 1999, and voter-approved bonds which were voted on by the electorate on and after March 1, 1999, as such payments shall become due, except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration.

(b) This guaranty does not extend to the payment of any redemption premium.

(c) Reference to this chapter by its title on the face of any bond conclusively establishes the guaranty provided to that bond under provisions of this chapter.

(3)(a) Any bond guaranteed under this chapter that is currently refunded and considered paid for no longer has the benefit of the guaranty provided by this chapter from and after the date on which that bond was considered to be paid.

(b) In accordance with [section 57-504\(7\), Idaho Code](#), any bond guaranteed under this chapter that is advance refunded and is itself secured by bond proceeds held in escrow no longer has the benefit of the guaranty provided by this chapter from and after the date on which the proceeds from the advance refunding have been placed in an irrevocable escrow.

(4) Only validly issued bonds issued after the effective date of this chapter are guaranteed under this chapter.

### **History.**

[I.C., § 33-5303](#), as added by 1999, ch. 328, § 1, p. 840; am. 2002, ch. 305, § 1, p. 869; am. 2007, ch. 89, § 2, p. 243; am. 2009, ch. 185, § 1, p. 601; am. 2016, ch. 159, § 1, p. 442.

## **STATUTORY NOTES**

### **Amendments.**

The 2007 amendment, by ch. 89, added subsection (5).

The 2009 amendment, by ch. 185, in the section catchline, twice substituted “guaranty” for “guarantee”; in subsection (3)(b), substituted “school district” for “board”; and deleted subsection (5), which referenced maximum limits of state school bond guarantees.

The 2016 amendment, by ch. 159, rewrote paragraph (3)(b), which formerly read: “Any refunding bond issued by a school district that is itself secured by government obligations until the proceeds are applied to pay refunded bonds is not guaranteed under the provisions of this chapter, until the refunding bonds cease to be secured by government obligations”.

### **Compiler’s Notes.**

The phrase “the effective date of this chapter” in subsection (4) refers to the effective date of S.L. 1999, Chapter 328, which was effective March 24,

1999.

### **Effective Dates.**

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

Section 2 of S.L. 2002, ch. 305 declared an emergency. Approved March 26, 2002.

Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

## **JUDICIAL DECISIONS**

### **Constitutionality.**

The pledge of state sales tax monies pursuant to subsection (2) was not in conflict with the proscription against giving the state's credit as found in Idaho [Const., Art. VIII, § 2](#), because there is nothing in Idaho [Const., Art. VIII, § 2](#) prohibiting a pledge of state sales tax proceeds in an amount exceeding state aid in support of educational programs. [State Endowment Fund Inv. Bd. v. Crane, 135 Idaho 667, 23 P.3d 129 \(2001\)](#).

**33-5304. Program eligibility — Option to forego [forgo] guaranty. —**

(1)(a) Any school district through its board of trustees or its superintendent may apply to the state treasurer for the state's guaranty of its eligible bonds under this chapter. Where voter approval of a bond issuance is required by law, the school district must have such voter approval prior to its application for the state's guaranty.

(b) The state treasurer may charge the school district an application fee equal to the greater of the estimated costs to the state treasurer to process the application or five hundred dollars (\$500), which shall be payable at the time the school district applies for a guaranty under this chapter. The state treasurer may charge a transaction fee of not more than five one-hundredths of one percent (.05%) of the total principal and interest payable on the school district's bonds. Such transaction fee shall be payable to the state treasurer at the time the school district issues the bonds guaranteed under this chapter and the application fee paid by the school district shall be credited against such transaction fee.

(c) There is hereby created in the state treasury the "Idaho School Bond Guaranty Administrative Fund" which shall be credited:

- (i) Fees collected pursuant to this section;
- (ii) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and
- (iii) All other moneys as may be provided by law.

Moneys in the fund shall be continuously appropriated to the state treasurer, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund. Moneys in the fund shall be used to defray costs associated with the implementation, administration, and oversight of the Idaho school bond guaranty act.

(d) The state superintendent of public instruction shall provide an analysis of an applicant school district's fiscal solvency upon the request of the state treasurer.

(e) After reviewing the request, the analysis of the superintendent of public instruction, the reports submitted by the school district pursuant to [section 33-5305, Idaho Code](#), and other information available to the state treasurer, the state treasurer shall determine in good faith whether or not the financial affairs and condition of a school district are such that it would be imprudent for the state to guarantee the bonds of that school district. The state treasurer shall also determine in good faith whether the guarantee of the bonds of the school district will adversely impact the credit rating of the state of Idaho or other financing programs benefiting the state of Idaho.

(f) Unless the state treasurer finds that the criteria set forth in subsection (1)(e) of this section prevents the issuance of a certificate of eligibility, the state treasurer shall promptly issue a certificate of eligibility and provide it to the requesting school district.

(g)(i) The school district receiving the certificate and all other persons may rely on the certificate as evidencing eligibility for the guaranty for one (1) year from and after the date of the certificate, without making further inquiry of the state treasurer during the year. The certificate of eligibility shall state that the guaranty is good for the life of the bond. This guaranty shall be printed on all bonds guaranteed pursuant to this chapter or shall be an addendum attached to all bonds guaranteed pursuant to this chapter.

(ii) The certificate of eligibility is valid for the life of the bond, even if the state treasurer later determines that the school district is ineligible for future guaranties.

(2) Any school district that chooses to forego [forgo] the benefits of the guaranty provided by this chapter for a particular issue of bonds may do so by not referring to this chapter on the face of its bonds.

(3) Any school district that has bonds, the principal of or interest on which has been paid, in whole or in part, by the state under this chapter may not issue any additional bonds guaranteed by this act until:

(a) All payment obligations of the school district to the state under the default avoidance program are satisfied; and

(b) The state treasurer certifies in writing, to be kept on file by the state treasurer, that the school district is fiscally solvent.

(4) Bonds not guaranteed by this chapter are not included in the definition of “bond” in [section 33-5302, Idaho Code](#), as used generally in this chapter, are not subject to the requirements of and do not receive the benefits of this chapter.

### **History.**

[I.C., § 33-5304](#), as added by 1999, ch. 328, § 1, p. 840; am. 2009, ch. 185, § 2, p. 601.

## **STATUTORY NOTES**

### **Cross References.**

State treasurer, § 67-1201 et seq.

### **Amendments.**

The 2009 amendment, by ch. 185, rewrote the section to the extent that a detailed comparison is impracticable.

### **Compiler’s Notes.**

The words “this act,” as used in the introductory paragraph in subsection (3), refer to S.L. 1979, Chapter 328, which is codified as §§ 33-5301 to 33-5308, 33-5309, 33-5310, 57-728, and 63-3638. The reference probably should be to “this chapter,” being chapter 53, title 33, Idaho Code.

The bracketed insertions in the section heading and in paragraph (2) were added by the compiler to provide the correct word.

### **Effective Dates.**

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

**33-5305. State to monitor fiscal solvency of school districts — Duties of state treasurer and state superintendent of public instruction. — (1)**

The state treasurer shall:

(a) Receive the following from each school district applying for the state's guaranty under this chapter and each school district receiving the state's guaranty under this chapter: (i) A copy of the annual statement of financial condition and report required in [section 33-701, Idaho Code](#); and (ii) A copy of the complete audit of the financial statements of the school district prepared pursuant to [section 33-701, Idaho Code](#).

(b) In conjunction with the state superintendent of public instruction, annually report his conclusions concerning the fiscal solvency of school districts receiving a guaranty under this chapter to the governor, the legislature and the endowment fund investment board; and (c) Report immediately to the governor, the endowment fund investment board and the state superintendent of public instruction any circumstances suggesting that a school district will be unable to timely meet its debt service obligations and recommend a course of remedial action.

(2) The state superintendent of public instruction shall:

(a) Provide an analysis of a school district's current fiscal solvency upon the request of the state treasurer; (b) In conjunction with the state treasurer, annually report his conclusions concerning the fiscal solvency of school districts receiving a guaranty under this chapter to the governor, the legislature and the endowment fund investment board; and (c) Report immediately to the governor, the endowment fund investment board and the state treasurer any circumstances suggesting that a school district will be unable to timely meet its debt service obligations and recommend a course of remedial action.

(3)(a) After examining the analysis of the state superintendent of public instruction and other information available to the state treasurer, the state treasurer shall determine whether or not the financial affairs and condition of a school district are such that it would be imprudent for the state to guarantee future bonds of that school district.

(b) If the state treasurer determines that the state should not guarantee the bonds of that school district, the state treasurer shall: (i) Prepare a determination of ineligibility for future guaranties; and (ii) Keep it on file in the office of the state treasurer.

(c) The state treasurer may remove a school district from the status of ineligibility for future guaranties when a subsequent report of the school district or other information made available to the state treasurer evidences that it is no longer imprudent for the state to guarantee the bonds of that school district.

(4) Nothing in this section affects the state's guaranty of bonds of a school district issued: (a) Before determination of ineligibility for future guaranties; (b) After the eligibility for future guaranties of the school district is restored; or (c) Under a certificate of eligibility issued under this chapter.

### **History.**

**I.C., § 33-5305**, as added by 1999, ch. 328, § 1, p. 840; am. 2009, ch. 185, § 3, p. 601; am. 2010, ch. 295, § 1, p. 795.

## **STATUTORY NOTES**

### **Cross References.**

Endowment fund investment board, § 57-718.

State superintendent of public instruction, § 67-1501 et seq.

State treasurer, § 67-1201 et seq.

### **Amendments.**

The 2009 amendment, by ch. 185, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 295, in paragraph (1)(b), added “In conjunction with the state superintendent of public instruction” at the beginning and deleted “and the state superintendent of public instruction” from the end; and added the paragraph (2)(a) designation and paragraphs (2)(b) and (2)(c).

### **Effective Dates.**



Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

Section 6 of S.L. 2010, ch. 295 declared an emergency. Approved April 11, 2010.

**33-5306. Paying agent to provide notice — State treasurer to execute transfer to paying agents — Effect of transfer. —**

(1)(a) The superintendent of each school district with outstanding, unpaid bonds shall transfer moneys sufficient for the scheduled debt service payment to its paying agent at least fifteen (15) days before any principal or interest payment date for the bonds.

(b) The paying agent may, if instructed to do so by the superintendent, invest the moneys at the risk and for the benefit of the school district until the payment date.

(c) A superintendent who is unable to transfer the scheduled debt service payment to the paying agent fifteen (15) days before the payment date shall immediately notify the paying agent and the state treasurer as set forth in the procedures for notice under the provisions of this chapter established by the state treasurer.

(2) If sufficient funds are not transferred to the paying agent as required by subsection (1) of this section, the paying agent shall notify the state treasurer of that failure in writing at least ten (10) days before the scheduled debt service payment date as set forth in the procedures for notice under the provisions of this chapter established by the state treasurer.

(3)(a) If sufficient moneys to pay the scheduled debt service payment have not been transferred to the paying agent, the state treasurer shall, on or before the scheduled payment date, gather sufficient moneys to make the scheduled debt service payment as set forth in [section 33-5308, Idaho Code](#), and transfer such moneys to the paying agent.

(b) The payment by the treasurer:

(i) Discharges the obligation of the issuing school district to its bondholders for the payment; and

(ii) Transfers the rights represented by the general obligation of the school district from the bondholders to the state.

(c) The school district shall pay the transferred obligation to the state as provided in this chapter.

**History.**

I.C., § 33-5306, as added by 1999, ch. 328, § 1, p. 840; am. 2010, ch. 295, § 2, p. 795.

**STATUTORY NOTES****Cross References.**

State treasurer, § 67-1201 et seq.

**Amendments.**

The 2010 amendment, by ch. 295, rewrote the section, authorizing the treasurer to establish procedures for providing notice where a debt service payment may be delinquent and providing the process for the treasurer to make such payments.

**Effective Dates.**

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

Section 6 of S.L. 2010, ch. 295 declared an emergency. Approved April 11, 2010.

**33-5307. State financial assistance intercept mechanism — Duties of state treasurer and attorney general — Interest and penalty provisions.**

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(1)(a) If one (1) or more payments on bonds are made by the state treasurer as provided in this chapter, the state treasurer shall:

(i) Immediately intercept any payments from any source of operating moneys provided by the state to the school district that issued the bonds that would otherwise be paid to the school district by the state; and

(ii) Apply the intercepted payments to reimburse the state for payments made pursuant to the state's guaranty until all obligations of the school district to the state arising from those payments, including interest and penalties, are paid in full.

(b) The state has no obligation to the school district or to any person or entity to replace any moneys intercepted under the authority of this subsection.

(2) The school district that issued bonds for which the state has made all or part of a debt service payment shall:

(a) Reimburse all moneys drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all moneys paid by the state from the date the moneys drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus one percent (1%); and

(c) Pay all penalties required by this chapter.

(3)(a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the school district on the state, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the state to make payments on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the school district to make payment on its bonds in a timely manner, impose on the school district a penalty of not more than five percent (5%) of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.

(4)(a)(i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one (1) year from the state's payment of a school district's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the school district and its board to compel it to:

1. Levy and provide tax revenues to pay debt service on its bonds when due; and

2. Meet its repayment obligations to the state.

(ii) In pursuing its rights under paragraph (a) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a school district.

(b) The attorney general shall assist the state treasurer in these duties.

(c) The school district shall pay the attorney's fees, expenses, and costs of the state treasurer and the attorney general.

(5)(a) Except as provided in paragraph (c) of this subsection, any school district whose operating funds were intercepted under this section may replace those funds from other school district moneys or from property taxes, subject to the limitations provided in this subsection.

(b) A school district may use property taxes or other moneys to replace intercepted funds only if the property taxes or other moneys were derived from:

- (i) Taxes originally levied to make the payment but which were not timely received by the school district;

- (ii) Taxes from a supplemental levy made to make the missed payment or to replace the intercepted moneys;

- (iii) Moneys transferred from the undistributed reserve, if any, of the school district; or

- (iv) Any other source of money on hand and legally available.
- (c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection, a school district may not replace operating funds intercepted by the state with moneys collected and held to make payments on bonds if that replacement would divert moneys from the payment of future debt service on the bonds and increase the risk that the state's guaranty would be called upon an additional time.

### **History.**

**I.C., § 33-5307**, as added by 1999, ch. 328, § 1, p. 840; am. 2009, ch. 185, § 4, p. 601.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

Public school permanent endowment fund, Idaho **Const., Art. IX, § 4** and **§ 33-902**.

State treasurer, § 67-1201 et seq.

### **Amendments.**

The 2009 amendment, by ch. 185, in the section catchline, substituted "duties of state treasurer and attorney general" for "state treasurer duties"; throughout the section, substituted "school district" for "board" and inserted "school" preceding "district"; in subsection (1)(a)(i), deleted "from the public school permanent endowment fund or" following "payments"; and, in subsection (5)(c), substituted "an additional time" for "a second time."

### **Effective Dates.**

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

**33-5308. Backup liquidity arrangements.** — (1) If, at the time the state is required to make a debt service payment under its guaranty on behalf of a school district, sufficient moneys of the state are not on hand and available for that purpose, the state treasurer shall gather sufficient funds to make the debt service payment by using one (1) or more of the following:

(a) Intercepting all or a portion of any payments from any source of operating moneys provided by the state to the school district that issued the bonds that would otherwise be paid to the school district by the state; (b) Requesting the state controller transfer to the public school guarantee fund established by [section 33-5309, Idaho Code](#), moneys from the state general fund established by [section 67-1205, Idaho Code](#), representing sales tax receipts of the state in an amount not to exceed the scheduled debt service payment and using such funds to make all or a portion of the required payment; (c) Issuing state notes, subject to the terms of [section 33-5308A, Idaho Code](#); or (d) Negotiating a voluntary loan from funds administered by the endowment fund investment board to make all or a portion of the required payment, provided that nothing in this subsection (1)(d) requires the endowment fund investment board to lend moneys to the state treasurer.

(2) The state has no obligation to the school district or to any person or entity to replace any moneys intercepted under the authority of this section. Any school district whose operating funds were intercepted pursuant to this section may replace those funds from other school district moneys or from property taxes, subject to the limitations provided in [section 33-5307, Idaho Code](#).

(3) If the sources of funds set forth in subsection (1) of this section are insufficient to make a debt service payment and the school district bond is guaranteed by the credit enhancement program established pursuant to [section 57-728, Idaho Code](#), the state treasurer shall make a request for the purchase of notes in the amount of the deficiency by the endowment fund investment board on behalf of the public school [permanent] endowment [fund] as set forth in [section 57-728, Idaho Code](#).

**History.**

I.C., § 33-5308, as added by 1999, ch. 328, § 1, p. 840; am. 2010, ch. 295, § 3, p. 795.

## STATUTORY NOTES

### Cross References.

Endowment fund investment board, § 57-718.

Public school guarantee fund, § 33-5309.

Public school permanent endowment fund, Idaho Const., Art. IX, § 4 and § 33-902.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

### Amendments.

The 2010 amendment, by ch. 295, rewrote the section to the extent that a detailed comparison is impracticable.

### Compiler's Notes.

The bracketed insertions in subsection (3) were added by the compiler to correct the name of the referenced fund. See § 57-728(4)(b) and § 33-902.

### Effective Dates.

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

Section 6 of S.L. 2010, ch. 295 declared an emergency. Approved April 11, 2010.

## JUDICIAL DECISIONS

### Constitutionality.

Where the 1998 constitutional amendments to amend Idaho Const., Art. IX, §§ 3 and 11 were related as part of a common scheme for funding education, the joint submission of the amendments to the electorate on a single ballot was constitutional, and the subsequently enacted Idaho School Bond Guaranty Act and related statutory enactments or amendments by



S.L. 1999, ch. 328 were upheld. *State Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129 (2001).

**33-5308A. State notes issued to finance default avoidance program.**

— State notes issued by the state treasurer pursuant to section 33-5308, Idaho Code, shall comply with the following:

(1) Each series of notes issued shall mature not later than twelve (12) months from the date the notes are issued, or the end of the fiscal year, whichever is sooner.

(2) Notes issued may be refunded using the procedures set forth in this chapter for the issuance of notes, in an amount not more than the amount necessary to pay principal of an accrued but unpaid interest on any refunded notes plus all costs of issuance, sale and delivery of the refunding notes, rounded up to the nearest integral multiple of five thousand dollars (\$5,000).

(3) Each series of refunding notes shall mature not later than twelve (12) months from the date the refunding notes are issued, or the end of the fiscal year, whichever is sooner.

(4) Before issuing or selling any note to other than a state fund or account, the state treasurer shall prepare a written plan of financing and file it with the governor. The plan of financing shall comply with the following:

(a) The plan of financing shall provide for:

(i) The terms and conditions under which the notes will be issued, sold and delivered;

(ii) The taxes or revenues to be anticipated;

(iii) The maximum amount of notes that may be outstanding at any one (1) time under the plan of financing;

(iv) The sources of payment of the notes;

(v) The rate or rates of interest, if any, on the notes or a method, formula or index under which the interest rate or rates on the notes may be determined during the time the notes are outstanding; and

(vi) All other details relating to the issuance, sale and delivery of the notes.

(b) In identifying the taxes or revenues to be anticipated and the sources of payment of the notes in the financing plan, the state treasurer may include any combination of the following:

- (i) The taxes authorized by this chapter;
- (ii) The intercepted revenues authorized by this chapter;
- (iii) The proceeds of refunding notes; or
- (iv) The terms and conditions of arrangements entered into by the state treasurer on behalf of the state with financial and other institutions for letters of credit, standby letters of credit, reimbursement agreements, and remarketing, indexing and tender agreements to secure the notes, including payment from any legally available source of fees, charges or other amounts coming due under the agreements entered into by the state treasurer.

(5) When issuing the notes to other than a state fund or account, the state treasurer shall issue an order setting forth the interest, form, manner of execution, payment, manner of sale, prices at or below face value, and all details of issuance of the notes. The order and the details set forth in the order shall conform with any applicable plan of financing and with this chapter.

(6) Each note shall recite:

(a) That it is a valid obligation of the state and that the full faith, credit, and resources of the state are pledged for the payment of the principal of and interest on the note from the taxes or revenues identified in accordance with its terms and the constitution and laws of Idaho.

(b) That these general obligation notes do not constitute debt of the state for the purposes of the debt limitation of [section 1, article VIII, of the constitution](#) of the state of Idaho.

(7) Immediately upon the completion of any sale of notes, the state treasurer shall:

(a) Make a verified return of the sale to the state controller, specifying the amount of notes sold, the persons to whom the notes were sold, and the price, terms and conditions of the sale; and

(b) Credit the proceeds of the sale, other than accrued interest and amounts required to pay costs of issuance of the notes, to the general fund to be applied to the purpose for which the notes were issued.

**History.**

I.C., § 33-5308A, as added by 2010, ch. 295, § 4, p. 795.

**STATUTORY NOTES**

**Cross References.**

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

**Effective Dates.**

Section 6 of S.L. 2010, ch. 295 declared an emergency. Approved April 11, 2010.

**33-5309. Unlimited sales tax receipts pledge — State controller duties. —**

(1)(a) There is hereby created in the state treasury the public school guarantee fund. Moneys in the fund shall be used only for payment of debt service payments under the provisions of this chapter, repayment of borrowing undertaken under the provisions of this chapter, to repay state funds used to make debt service payments under the provisions of this chapter, or as provided in [section 33-5308, Idaho Code](#). Earnings of the public school guarantee fund shall be deposited into the general fund established by [section 67-1205, Idaho Code](#). If moneys expected to be intercepted under this chapter are projected to be insufficient to make a debt service payment pursuant to [section 33-5308, Idaho Code](#), to reimburse the state for its payments of school districts' scheduled debt service payments or it is necessary for the state treasurer to borrow as provided in this chapter and amounts to be intercepted under this chapter are expected to be insufficient to timely pay the general obligation notes issued or other borrowing undertaken under [section 33-5308, Idaho Code](#), the state treasurer shall certify to and give notice to the state controller of the amount of the deficiency.

(b) After receipt of that certified notice from the state treasurer, the state controller shall cause moneys representing state sales tax receipts to be transferred from the general fund established by [section 67-1205, Idaho Code](#), and deposited in the public school guarantee fund in the amount of the deficiency certified by the state treasurer.

(2) To the extent that other legally available revenues and funds of the state are insufficient to meet the certified deficiency, the state tax commission shall transfer moneys from the sales tax account as set forth in [section 63-3638, Idaho Code](#).

**History.**

[I.C., § 33-5309](#), as added by 1999, ch. 328, § 1, p. 840; am. 2010, ch. 295, § 5, p. 795.

**STATUTORY NOTES**

**Cross References.**

State controller, § 67-1001 et seq.

State tax commission, Idaho [Const., Art. VII, § 12](#), and [§ 63-101](#).

State treasurer, § 67-1201 et seq.

**Amendments.**

The 2010 amendment, by ch. 295, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.**

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

Section 6 of S.L. 2010, ch. 295 declared an emergency. Approved April 11, 2010.

**33-5310. Credit enhancement program.** — If approved to participate in the Idaho school bond guaranty program established in this chapter, a school district may also seek credit enhancement, as authorized pursuant to section 57-728, Idaho Code, by applying therefor pursuant to section 57-728(3), Idaho Code.

### **History.**

I.C., § 33-5310, as added by 1999, ch. 328, § 1, p. 840; am. 2009, ch. 185, § 5, p. 601.

## **STATUTORY NOTES**

### **Amendments.**

The 2009 amendment, by ch. 185, rewrote the section, providing that certain school districts may seek specified credit enhancement.

### **Effective Dates.**

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

## **JUDICIAL DECISIONS**

### **Constitutionality.**

Where the 1998 constitutional amendments to amend Idaho Const., Art. IX, §§ 3 and 11 were related as part of a common scheme for funding education, the joint submission of the amendments to the electorate on a single ballot was constitutional, and the subsequently enacted Idaho School Bond Guaranty Act and related statutory enactments or amendments by S.L. 1999, ch. 328 were upheld. *State Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129 (2001).





## **CHAPTER 54**

### **COLLEGE SAVINGS PROGRAM**

Section.

33-5401. Definitions.

33-5402. State college savings program board — College savings program  
— Powers and duties.

33-5403. Administration of the program.

33-5404. Program requirements.

33-5405. Taxation to beneficiary.

33-5406. Scholarships and financial aid provisions.

33-5407. Limitations of chapter.

33-5408. Annual report.

33-5409. College savings fund.

33-5410. Unclaimed accounts.

**33-5401. Definitions.** — As used in this chapter, the following terms have the following meanings unless the context clearly denotes otherwise:

(1) “Account” means an individual trust account or savings account established as prescribed in this chapter.

(2) “Account owner” means the person or state or local government organization designated in the agreement governing the account as having the right to withdraw moneys from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) “Board” means the state college savings program board created in [section 33-5402, Idaho Code](#).

(4) “Designated beneficiary,” except as provided in [section 33-5404, Idaho Code](#), means, with respect to an account, the individual designated at the time the account is opened as the individual whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with [section 33-5404, Idaho Code](#), the replacement beneficiary.

(5) “Eligible educational institution” shall have the meaning provided in [26 U.S.C. 529](#).

(6) “Financial institution” means any state bank, national bank, savings bank, savings and loan association, credit union, insurance company, brokerage firm, trust company, mutual fund, investment firm or other similar entity that is authorized to do business in this state.

(7) “Member of the family” shall have the meaning as provided in [26 U.S.C. 529](#).

(8) “Nonqualified withdrawal” means a withdrawal from an account that is subject to additional tax arising from the withdrawal under the Internal Revenue Code, as defined in [section 63-3004, Idaho Code](#). For the purpose of [section 63-3022\(o\), Idaho Code](#), the amount of a nonqualified withdrawal from an account means the entire amount of the withdrawal, less any portion of the withdrawal that is a qualified withdrawal.

(9) “Person” means an individual, a trust, an estate, a partnership, an association, a foundation, a guardianship, a corporation, or a custodian under the Idaho uniform transfers to minors act.

(10) “Program” means one (1) or more college savings programs established under this chapter.

(11) “Qualified higher education expenses” shall have the meaning provided in [26 U.S.C. 529](#).

(12) “Qualified withdrawal” means a withdrawal from an account used for qualified higher education expenses of the designated beneficiary of the account, but only if the withdrawal is made in accordance with this chapter.

### **History.**

[I.C., § 33-5401](#), as added by 2000, ch. 213, § 1, p. 573; am. 2002, ch. 50, § 1, p. 113; am. 2003, ch. 5, § 1, p. 9; am. 2008, ch. 275, § 1, p. 783; am. 2013, ch. 110, § 1, p. 261; am. 2018, ch. 46, § 7, p. 111; am. 2020, ch. 245, § 1, p. 716.

## **STATUTORY NOTES**

### **Cross References.**

Uniform transfers to minors act, § 68-801 et seq.

### **Amendments.**

The 2008 amendment, by ch. 275, in subsection (2), inserted “or state or local government organization”; in subsection (4), twice substituted “individual” for “person”; added present subsections (5) and (9) and redesignated the existing subsections accordingly; and deleted former subsection (6), which was the definition for “Higher education institution.”

The 2013 amendment, by ch. 110, inserted “trust company, mutual fund, investment firm” near the end of subsection (6).

The 2018 amendment, by ch. 46, substituted the present provisions of subsection (10) for “‘Program’ means the college savings program established under this chapter.”

The 2020 amendment, by ch. 245, rewrote former subsection (8), which read: “(8) ‘Nonqualified withdrawal’ means an account withdrawal that is

not one (1) of the following: (a) A qualified withdrawal; (b) A withdrawal made as the result of the death or disability of the designated beneficiary of an account; (c) A withdrawal that is made on account of a scholarship as defined in [26 U.S.C. section 117](#) or an educational allowance as defined in [26 U.S.C. section 25A\(g\)\(2\)](#); (d) A rollover or change of the designated beneficiary”; and substituted “account used for qualified” for “account to pay the qualified” near the beginning of subsection (12).

### **Effective Dates.**

Section 3 of S.L. 2000, ch. 213 declared an emergency retroactively to January 1, 2000 and approved April 12, 2000.

Section 3 of S.L. 2002, ch. 50 declared an emergency retroactively to January 1, 2002. Approved February 27, 2002.

Section 8 of S.L. 2018, ch. 46 declared an emergency and made this section retroactive to January 1, 2018. Approved March 12, 2018.

Section 4 of S.L. 2020, ch. 245 declared an emergency and made the amendments of this section retroactive to January 1, 2020. Approved March 24, 2020.

**33-5402. State college savings program board — College savings program — Powers and duties.** — There is hereby created the state college savings program board. The board shall consist of the state treasurer or his designee who shall serve as chair, the governor or designee, the state controller or designee, the attorney general or designee, the superintendent of public instruction or designee, and the secretary of state or designee. A quorum shall be necessary to transact business. Members of the board shall be compensated by their appointing entity. The state college savings program board shall:

- (1) Develop and implement the program in a manner consistent with this chapter through the adoption of rules, guidelines and procedures;
- (2) Retain professional services, if necessary, including accountants, auditors, consultants and other experts;
- (3) Seek rulings and other guidance from the United States department of the treasury, the internal revenue service and the state tax commission relating to the program;
- (4) Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by [section 529 of the Internal Revenue Code of 1986](#), as amended;
- (5) Interpret, in rules, policies, guidelines and procedures, the provisions of this chapter broadly in light of its purpose and objectives;
- (6) Charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;
- (7) Select the depositories and act as or select managers of the program in accordance with this chapter;
- (8) Enter into contracts, within the limit of funds available therefor, acquire services and personal property, and do and perform any acts that may be necessary in the administration of the program. As a board comprised of elected officials, the board shall be exempt from the

provisions of the procurement statutes and shall not be an agency as defined in [section 67-9203, Idaho Code](#);

(9) Establish, in its discretion, a trust or other method of segregating the funds of participants in the program from the general funds of the state, the funds of the board and the funds of the members of the board;

(10) Administer the program and any trust established by the board as instrumentalities of the state under [section 529 of the Internal Revenue Code of 1986](#), as amended, and the federal securities law, including the securities act of 1933, as amended, the trust indenture act of 1939, as amended, and the investment company act of 1940, as amended;

(11) Employ and at its pleasure discharge an executive director and such other employees necessary in the administration of the program. Employees of the board shall be nonclassified exempt employees pursuant to the provisions of chapter 53, title 67, Idaho Code.

#### **History.**

[I.C., § 33-5402](#), as added by 2000, ch. 213, § 1, p. 573; am. 2008, ch. 275, § 2, p. 784; am. 2013, ch. 110, § 2, p. 261; am. 2016, ch. 289, § 9, p. 793.

### **STATUTORY NOTES**

#### **Cross References.**

Attorney general, § 67-1401 et seq.

Secretary of state, § 67-901 et seq.

State controller, § 67-1001 et seq.

State superintendent of public instruction, § 67-1501 et seq.

State tax commission, Idaho [Const., Art. VII, § 12](#) and [§ 63-101](#).

State treasurer, § 67-1201 et seq.

#### **Amendments.**

The 2008 amendment, by ch. 275, added subsections (8) through (10).

The 2013 amendment, by ch. 110, rewrote subsection (7), which formerly read: “Select the financial institution or institutions to act as the depository and manager of the program in accordance with this chapter”; added the last sentence in subsection (8); and added subsection (11).

The 2016 amendment, by ch. 289, substituted “67-9203” for “67-5716” at the end of subsection (8).

### **Federal References.**

**Section 529 of the Internal Revenue Code**, referred to in subsections (4) and (10), is compiled as **26 U.S.C.S. § 529**.

The securities act of 1933, referred to in subsection (10), is codified as **15 U.S.C.S. § 77a et seq.**

The trust indenture act of 1939, referred to in subsection (10), is codified as **15 U.S.C.S. § 77aaa et seq.**

The investment company act of 1940, referred to in subsection (10), is codified as **15 U.S.C.S. § 80a-1 et seq.**

### **RESEARCH REFERENCES**

**A.L.R.** — Construction and application of Trust Indenture Act of 1939 (TIA), **15 U.S.C. §§ 77aaa et seq. 80 A.L.R. Fed. 2d 329**.

**33-5403. Administration of the program.** — (1) The board shall implement the program through its staff, agreements with one (1) or more financial institutions engaged to act as the program's depositories and managers, or through agreements with any public entity or agency, including depository, investment or management relationships with other 529 plans or entities.

(2) The board shall implement the program and manage any trust established by the board consistent with sound financial principles and to obtain the federal income tax benefits or treatment provided by [section 529 of the Internal Revenue Code of 1986](#), as amended.

(3) Any financial institution engaged by the board shall hold each account in trust for the benefit of this state and the account owner.

(4) The board may delegate to the office of a board member any of its administrative powers and duties, if the board determines that such delegation is necessary for the efficient and effective administration of the program and the board member accepts the delegation. Administrative powers and duties include payroll processing, routine public contacts and public records maintenance. The board member shall be compensated for administrative activities pursuant to [section 33-5409, Idaho Code](#).

### **History.**

[I.C., § 33-5403](#), as added by 2000, ch. 213, § 1, p. 573; am. 2007, ch. 170, § 1, p. 501; am. 2013, ch. 110, § 3, p. 261.

## **STATUTORY NOTES**

### **Amendments.**

The 2007 amendment, by ch. 170, substituted “ten (10) years” for “five (5) years” in subsection (7).

The 2013 amendment, by ch. 110, rewrote the section to the extent that a detailed comparison is impracticable.

### **Federal References.**



Section 529 of the internal revenue code of 1986, referred to in subsection (2), is codified as [26 U.S.C.S. § 529](#).

**33-5404. Program requirements.** — (1) The program shall be operated through the use of individual accounts. Each account may be opened by any person who desires to save for the qualified higher education expenses of a person. If approved by the board, minors may open an account that cannot be disaffirmed pursuant to section 32-103, Idaho Code. A person may open an account by satisfying each of the following requirements:

(a) Completing an application in the form prescribed by the board. The application shall include the following information:

(i) The name, address and social security number or employer identification number of the contributor;

(ii) The name, address and social security number of the account owner if the account owner is not the contributor;

(iii) The name, address and social security number of the designated beneficiary;

(iv) The certification relating to no excess contributions required by subsection (13) of this section; and

(v) Any other information that the board may require;

(b) Paying the onetime application fee established by the board;

(c) Making the minimum contribution required by the board or by opening an account; and

(d) Designating the type of account to be opened if more than one (1) type of account is offered.

(2) Any person may make contributions to an account after the account is opened.

(3) Contributions to accounts may be made only in cash.

(4) Account owners may withdraw all or part of the balance from an account on sixty (60) days' notice, or a shorter period as may be authorized by the board and as described in the securities disclosure or offering

document approved by the board and provided to account owners and potential account owners.

(5) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the board.

(6) On the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

(7) Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate the provisions of this section relating to excess contributions or to direction of investments.

(8) Each account shall be maintained separately from each other account under the program.

(9) Separate records and accounting shall be maintained for each account for each designated beneficiary.

(10) No contributor to, account owner of or designated beneficiary of any account may direct the investment of any contributions to an account or the earnings from the account.

(11) The board may transfer accounts held by a depository or manager to a successor depository or manager; provided, however, that the transfer to a successor depository or manager does not cause the plan to cease to be a qualified tuition program or subject individual accounts to taxes or penalties.

(12) Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

(13) The board shall prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The board's rules, policies, guidelines, or procedures shall address the following:

(a) Procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(b) The establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(c) The board shall review the quarterly reports received from participating financial institutions and certify that the balance in all qualified tuition programs, as defined in [section 529 of the Internal Revenue Code](#), of which that person is the designated beneficiary does not exceed the lesser of:

(i) A maximum college savings amount established by the board from time to time; or

(ii) The cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur; and

(d) Requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section.

(14) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution shall be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

(15) The program shall provide statements to each account owner at least once each year within thirty-one (31) days after the twelve (12) month period to which they relate. The statement shall identify the contributions made during a preceding twelve (12) month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period and any other matters that the board requires be reported to the account owner.

(16) Statements and information returns relating to accounts shall be prepared and filed to the extent required by federal or state tax law.

(17) A state or local government or organization described in [section 501\(c\)\(3\) of the Internal Revenue Code](#) may open and become the account

owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.

(18) In the case of any account described in subsection (17) of this section, the requirement that a designated beneficiary be designated when an account is opened does not apply and each person who receives an interest in the account as a scholarship shall be treated as a designated beneficiary with respect to the interest.

(19) Any social security numbers, addresses or telephone numbers of individual account holders and designated beneficiaries that come into the possession of the board are confidential, are not public records and shall not be released by the board.

### **History.**

**I.C., § 33-5404**, as added by 2000, ch. 213, § 1, p. 573; am. 2002, ch. 50, § 2, p. 113; am. 2008, ch. 275, § 3, p. 784; am. 2013, ch. 110, § 4, p. 261; am. 2020, ch. 245, § 2, p. 716.

## **STATUTORY NOTES**

### **Amendments.**

The 2008 amendment, by ch. 275, in the introductory paragraph in subsection (1), added the second sentence; and deleted the last two sentences in subsection (4), which read: “These rules shall include provisions that will generally enable the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may, but need not, require one (1) or more of the following;” and deleted paragraphs (4)(a) and (4)(b), which read: “(a) Account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses or other supporting material; (b) Qualified withdrawals from an account shall be made only by a check payable as designated by the account owner”.

The 2013 amendment, by ch. 110, in the introductory paragraph in subsection (1), inserted “individual” near the end of the first sentence and substituted “Each account” for “An account” and “save for” for “save to pay” in the second sentence; rewrote subsection (11), which formerly read:

“If the board terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the board shall select the financial institution and type of investment to which the balance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are current contractors would not cause a plan to cease to be a qualified tuition program”; and substituted “program” for “financial institution” near the beginning of subsection (15).

The 2020 amendment, by ch. 245, substituted “If approved by the board, minors may open an account that” for “Minors may open an account which” at the beginning of the third sentence in the introductory paragraph in subsection (1); substituted “board and as described in the securities disclosure or offering document approved by the board and provided to account owners and potential account owners” for “board, under rules prescribed by the board” at the end of subsection (4); in subsection (7), substituted “violate the provisions” for “violate either of the following provisions” near the middle and substituted “direction of investments” for “investment choice” at the end; and, in the introductory paragraph in subsection (13), deleted “adopt rules to” preceding “prevent contributions” near the beginning of the first sentence and substituted “board’s rules, policies, guidelines or procedures” for “rules” at the beginning of the second sentence.

### **Federal References.**

[Section 529 of the Internal Revenue Code](#), referred to in paragraph (13) (c), is compiled as [26 U.S.C.S. § 529](#).

[Section 501\(c\)\(3\) of the Internal Revenue Code](#), referred to in subsection (17), is compiled as [26 U.S.C.S. § 501\(c\)\(3\)](#).

### **Effective Dates.**

Section 3 of S.L. 2002, ch. 50 declared an emergency retroactively to January 1, 2002. Approved February 27, 2002.

Section 4 of S.L. 2020, ch. 245 declared an emergency and made the amendments of this section retroactive to January 1, 2020. Approved March 24, 2020.

**33-5405. Taxation to beneficiary.** — The designated beneficiary, as defined in section 529(e) (1) of the Internal Revenue Code, from an individual trust account or savings account established under this chapter is liable for taxes that may accrue under chapter 30, title 63, Idaho Code, when a nonqualified withdrawal is received by the designated beneficiary.

**History.**

I.C., § 33-5405, as added by 2000, ch. 213, § 1, p. 573; am. 2020, ch. 245, § 3, p. 716.

**STATUTORY NOTES**

**Amendments.**

The 2020 amendment, by ch. 245, substituted “nonqualified withdrawal is received” for “qualified withdrawal is made” near the end of the section.

**Federal References.**

Section 529(e)(1) of the Internal Revenue Code is compiled as 26 U.S.C.S. § 529(e)(1).

**Effective Dates.**

Section 4 of S.L. 2020, ch. 245 declared an emergency and made the amendments of this section retroactive to January 1, 2020. Approved March 24, 2020.

**33-5406. Scholarships and financial aid provisions.** — (1) Any student loan program, student grant program or other financial assistance program established or administered by this state shall treat the balance in an account of which the student is a designated beneficiary as if it were an asset of the parent of the designated beneficiary and not as a scholarship or grant or as an asset of the student for determining a student's or parent's income, assets or financial need.

(2) Subsection (1) of this section applies to any financial assistance program administered by a state-supported college or university.

(3) Subsections (1) and (2) of this section do not apply if any of the following conditions exist: (a) Federal law requires all or a portion of the amount in an account to be taken into account in a different manner; (b) Federal benefits could be lost if all or a portion of the amount in an account is not taken into account in a different manner; (c) A specific grant establishing a financial assistance program requires that all or a portion of the amount in an account be taken into account.

### **History.**

I.C., § 33-5406, as added by 2000, ch. 213, § 1, p. 573.

## **JUDICIAL DECISIONS**

### **Bankruptcy Protection.**

Although Idaho residents who declared bankruptcy are allowed under § 11-604A to exempt money that was in a college savings account they established under §§ 33-5401 through 33-5410 from creditors' claims, a Chapter 7 debtor was not allowed under § 11-604A to exempt money she contributed to three college savings accounts less than 365 days before she declared bankruptcy, plus dividends and capital gains that were paid during that 365-period, because she created her college savings accounts under Virginia, not Idaho, law. *In re Acarregui*, 572 B.R. 247 (Bankr. D. Idaho 2017).



**33-5407. Limitations of chapter.** — (1) Nothing in this chapter shall be construed to:

(a) Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner; (b) Guarantee that a designated beneficiary will be admitted to an eligible education institution or be allowed to continue enrollment at or graduate from an eligible education institution located in this state after admission; (c) Establish state residency for a person merely because the person is a designated beneficiary; (d) Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(2) Nothing in this chapter establishes any obligation of this state or any agency or instrumentality of this state to guarantee for the benefit of any account owner, contributor to an account or designated beneficiary any of the following: (a) The return of any amounts contributed to an account;

(b) The rate of interest or other return on any account;

(c) The payment of interest or other return on any account; (d) Tuition rates or the cost of related higher education expenditures.

(3) Under policies adopted by the board, every contract, application, deposit slip or other similar document that may be used in connection with a contribution to an account shall clearly indicate that the account is not insured by this state and neither the principal deposited nor the investment return is guaranteed by this state.

### **History.**

I.C., § 33-5407, as added by 2000, ch. 213, § 1, p. 573; am. 2008, ch. 275, § 4, p. 787.

## **STATUTORY NOTES**

### **Amendments.**

The 2008 amendment, by ch. 275, in subsection (1)(b), twice substituted “eligible education” for “higher education”; and in subsection (3), substituted “policies” for “rules.”

## **JUDICIAL DECISIONS**

### **Bankruptcy Protection.**

Although Idaho residents who declared bankruptcy are allowed under § 11-604A to exempt money that was in a college savings account they established under §§ 33-5401 through 33-5410 from creditors’ claims, a Chapter 7 debtor was not allowed under § 11-604A to exempt money she contributed to three college savings accounts less than 365 days before she declared bankruptcy, plus dividends and capital gains that were paid during that 365-period, because she created her college savings accounts under Virginia, not Idaho, law. *In re Acarregui*, 572 B.R. 247 (Bankr. D. Idaho 2017).

**33-5408. Annual report.** — The board shall submit an annual report to the speaker of the house of representatives and the president pro tempore of the senate by February 1 that summarizes the board's findings and recommendations concerning the program established by this chapter.

**History.**

I.C., § 33-5408, as added by 2000, ch. 213, § 1, p. 573.

**33-5409. College savings fund.** — (1) There is hereby created in the state treasury the “College Savings Fund” to which shall be credited:

- (a) Administrative fees and service charges in connection with any agreement, contract or transaction related to the college savings program;
- (b) Fees and charges collected to cover costs associated with the powers and duties of the board as required in [section 33-5402, Idaho Code](#);
- (c) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and
- (d) All other moneys as may be provided by law.

(2) Moneys in the fund shall be continuously appropriated to the board, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund.

(3) Moneys in the fund shall only be used to effect the purposes of this chapter, pursuant to the provisions as prescribed herein. The office of a board member is authorized to receive a portion of the moneys approved by the board to defray costs associated with the implementation, administration and oversight of the college savings program, including the administrative activities delegated pursuant to [section 33-5403, Idaho Code](#).

### **History.**

[I.C., § 33-5409](#), as added by 2007, ch. 225, § 1, p. 678; am. 2013, ch. 110, § 5, p. 261.

## **STATUTORY NOTES**

### **Amendments.**

The 2013 amendment, by ch. 110, deleted “state college savings” preceding “board as required” near the middle of paragraph (1)(b); substituted “the board” for “the treasurer of the state of Idaho” near the middle of subsection (2); and rewrote subsection (3), which formerly read: “Moneys in the fund shall only be used to effect the purposes of this chapter, pursuant to the provisions as prescribed herein; provided however,

the office of the state treasurer is authorized to retain a portion of the moneys not to exceed one-half of one percent (0.5%) of the fund's annual revenues to defray costs associated with the implementation, administration and oversight of the college savings program.”

## **JUDICIAL DECISIONS**

### **Bankruptcy Protection.**

Although Idaho residents who declared bankruptcy are allowed under § 11-604A to exempt money that was in a college savings account they established under §§ 33-5401 through 33-5410 from creditors' claims, a Chapter 7 debtor was not allowed under § 11-604A to exempt money she contributed to three college savings accounts less than 365 days before she declared bankruptcy, plus dividends and capital gains that were paid during that 365-period, because she created her college savings accounts under Virginia, not Idaho, law. [In re Acarregui, 572 B.R. 247 \(Bankr. D. Idaho 2017\)](#).

**33-5410. Unclaimed accounts.** — (1) Except as set forth in this section, unclaimed accounts shall be subject to the provisions of section 14-512(1), Idaho Code.

(2) The date upon which the account owner is deemed to have last communicated that the owner is currently aware of his interest in the account shall not occur prior to the eighteenth birthday of the designated beneficiary.

(3) Upon receipt of a certificate of exemption from the state treasurer or his authorized agent or employee, the board may assume the responsibilities of the state treasurer under chapter 5, title 14, Idaho Code. Under a certificate of exemption, the board:

(a) Shall locate unclaimed accounts and refund the same to its rightful owner according to the provisions of chapter 5, title 14, Idaho Code, and the terms of the certificate of exemption.

(b) Shall retain the unclaimed account under the terms and provisions of the program.

(c) May maintain the investments selected by the account owner or establish an investment policy for all unclaimed accounts. The owner and designated beneficiary of an unclaimed account shall have no claim against the state or any agency or instrumentality of this state for retention of the account owner's investment selection or for compliance with an investment policy for unclaimed accounts.

(4) In the event the board fails to comply with the requirements of this section, the state treasurer may revoke the certificate of exemption, and the board shall transfer all unclaimed accounts and records to the state treasurer as required by chapter 5, title 14, Idaho Code.

### **History.**

I.C., § 33-5410, as added by 2008, ch. 275, § 5, p. 787; am. 2016, ch. 91, § 1, p. 281.

## **STATUTORY NOTES**

**Cross References.**

State treasurer, § 67-1201 et seq.

**Amendments.**

The 2016 amendment, by ch. 91, designated the existing provisions of the section as subsections (1) and (2); in present subsection (1), added the exception at the beginning and substituted “14-512(1)” for “14-506”; and added subsections (3) and (4).

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## **CHAPTER 55**

### **IDAHO DIGITAL LEARNING ACADEMY**

Section.

33-5501. Short title.

33-5502. Creation — Legislative findings — Goal.

33-5503. Academy board of directors.

33-5504. Duties of the academy board of directors.

33-5504A. Governmental entity.

33-5504B. Expenditures — Budget.

33-5505. Definitions.

33-5506. Courses — Development — Brokered — Credit — Accreditation.

33-5507. Registration — Accountability.

33-5508. Funding.

33-5509. Digital learning academy a state department for purposes of risk management.

**33-5501. Short title.** — This chapter shall be known and may be cited as the “Idaho Digital Learning Academy Act of 2002.”

**History.**

I.C., § 33-5501, as added by 2002, ch. 105, § 1, p. 284.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

**33-5502. Creation — Legislative findings — Goal.** — (1) There is hereby created the Idaho digital learning academy, a public school-choice learning environment which joins the best technology with the best instructional practices. The Idaho digital learning academy as provided for in this chapter, is not a single department of state government unto itself, nor is it a part of any of the twenty (20) departments of state government authorized by section 20, article IV, of the constitution of the state of Idaho, or of the departments prescribed in section 67-2402, Idaho Code. It is legislative intent that the Idaho digital learning academy operate and be recognized not as a state agency or department, but as a governmental entity whose creation has been authorized by the state, much in the manner as other single purpose districts.

(2) The legislature finds that it is in the best public interest to create the Idaho digital learning academy based on findings that indicate:

- (a) Technology continues to impact all facets of life, including the education of students of school age and adult learners;
- (b) Systems for delivery of education are as diverse as the learners;
- (c) Public school systems are seeking high quality educational choices within the public system, and are aligning curriculum and assessment with state achievement standards; and
- (d) The development of a comprehensive digital learning environment is cost prohibitive for individual school districts.

(3) The goal of the digital learning academy is to provide choice, accessibility, flexibility, quality and equity in curricular offerings for students in this state.

### **History.**

**I.C., § 33-5502**, as added by 2002, ch. 105, § 1, p. 284; am. 2005, ch. 132, § 1, p. 420; am. 2008, ch. 119, § 1, p. 333.

### **STATUTORY NOTES**

**Amendments.**

The 2008 amendment, by ch. 119, in subsection (1), in the first sentence, deleted “within the state department of education” following “created” and inserted “public,” and added the last two sentences; and in subsection (3), deleted “secondary” preceding “students.”

**Effective Dates.**

Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

**33-5503. Academy board of directors.** — (1) There is hereby created an academy board of directors which shall be responsible for the development and oversight of the Idaho digital learning academy.

(2) The academy board of directors shall be comprised of eight (8) voting members and one (1) nonvoting member as follows:

(a) Three (3) members shall be superintendents, each elected to a three (3) year term and each representing two (2) educational classification regions as established by the state board of education. One (1) superintendent shall be elected from among the superintendents in regions one and two on a rotating term basis between the two (2) regions; one (1) superintendent shall be elected from among the superintendents in regions three and four on a rotating term basis between the two (2) regions; and one (1) superintendent shall be elected from among the superintendents in regions five and six on a rotating term basis between the two (2) regions;

(b) Two (2) members shall be principals, each elected to a three (3) year term by the governing body of the Idaho association of school administrators;

(c) Two (2) members shall be citizens at-large who are not professional educators, appointed by the members of the academy board, each to a term of three (3) years;

(d) The state superintendent of public instruction shall be a voting member and shall serve concurrently with the term of office to which the state superintendent is elected; and

(e) One (1) member shall be an ex officio, nonvoting member appointed by the academy board of directors to serve as secretary to the academy board.

(3) For purposes of establishing staggered terms of office, the initial term of office for the superintendent position representing educational classification regions one and two shall be one (1) year, and thereafter shall be three (3) years. The initial term of office for the superintendent position representing educational classification regions three and four shall be two

(2) years, and thereafter shall be three (3) years. The superintendent position representing educational classification regions five and six shall be three (3) years. The initial term of office for one (1) principal position shall be one (1) year and thereafter shall be three (3) years, and the initial term of office for the other principal position shall be two (2) years and thereafter shall be three (3) years. The initial term of office for one (1) member at-large shall be one (1) year and thereafter shall be three (3) years, and the term of office for the other member at-large shall be three (3) years.

(4) No voting member shall serve for more than two (2) consecutive full terms. Members of the board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

(5) The board shall meet in person at least three (3) times annually; none of these three (3) meetings shall be conducted by telephone or video conferencing.

### **History.**

**I.C., § 33-5503**, as added by 2002, ch. 105, § 1, p. 284; am. 2008, ch. 119, § 2, p. 333; am. 2009, ch. 55, § 2, p. 156.

## **STATUTORY NOTES**

### **Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

The 2008 amendment, by ch. 119, in subsection (2), substituted “eight (8) voting members and one (1) nonvoting member” for “seven (7) voting members and two (2) nonvoting members”; added paragraph (2)(d); and redesignated former paragraph (2)(d) as paragraph (2)(e), and rewrote the subsection, which formerly read: “Two (2) members shall be ex officio, nonvoting members: (i) the state superintendent of public instruction who shall serve concurrently with the term of office to which the state superintendent is elected, and (ii) a member appointed by the academy board of directors to serve as secretary to the academy board.”

The 2009 amendment, by ch. 55, in subsection (2)(b), deleted “high school” preceding “principals” and “secondary” preceding “school administrators”; and, in the fourth sentence in subsection (3), twice deleted “high school” preceding “principal position.”

**Compiler’s Notes.**

For education regions of state, referred to in paragraph (2)(a), see <https://boardofed.idaho.gov/resources/map-of-education-regions-in-idaho>.

For more on Idaho association of school administrators, referred to in paragraph (2)(b), see <https://www.idschadm.org>.

**Effective Dates.**

Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

Section 4 of S.L. 2009, ch. 55 declared an emergency, making section 2 of the act effective upon passage and approval. Approved March 25, 2009.

**33-5504. Duties of the academy board of directors.** — The board shall be responsible for ensuring that academy procedures and courses are in compliance with the rules of the state board of education and applicable statutes of the state of Idaho. In addition, the board shall:

(1) Recommend policies to be established by rule of the state board for effecting the purposes of this chapter.

(2) Employ or contract with staff as necessary and purchase such supplies and equipment as are necessary to implement the provisions of this chapter, which purchases shall be exempt from the state procurement act in chapter 92, title 67, Idaho Code.

(3) To enter into contracts with any other governmental or public agency whereby the board agrees to render services to or for such agency in exchange for a charge reasonably calculated to cover the costs of rendering such service.

(4) To accept, receive and utilize any gifts, grants or funds and personal and real property that may be donated to it for the fulfillment of the purposes outlined in this chapter.

(5) Employ or contract with necessary faculty and teaching staff who are fully certificated Idaho teachers or administrators, to design and deliver planned curriculum content. The academy shall be exempt from the provisions of sections 33-513, 33-514, 33-514A, 33-515 and 33-515A, Idaho Code, and shall be exempt from chapter 53, title 67, Idaho Code. All teaching and educational staff of the academy shall be exempt, at will employees. The number of such staff shall largely be dictated by the number of courses under development, the number of courses offered, and the number of students participating in academy programs.

(6) Obtain housing where actual operations of the academy are conducted by academy staff.

(7) Contract with a service provider for delivery of academy courses online which shall be accessible twenty-four (24) hours a day, seven (7) days a week.



(8) Ensure that the academy is accredited as established by rule of the state board of education.

(9) Develop policy for earning credit in courses based on mastery of the subject, demonstrated competency, and meeting the standards set for each course.

(10) Provide for articulating the content of certain high school courses with college and university courses in order to award both high school and undergraduate college credit.

(11) Develop policies and practices which provide strict application of time limits for completion of courses.

(12) Develop policies and practices on accountability, both by the student and the teacher, and in accordance with the provisions of [section 33-5507, Idaho Code](#).

(13) Manage the moneys disbursed to the academy board from the superintendent.

(14) Set fees charged to school districts for student participation; fees charged for summer school; and fees charged to students and adults for professional development offerings.

(15) Contract with a certified public accounting firm to conduct an annual audit of the Idaho digital learning academy.

### **History.**

[I.C., § 33-5504](#), as added by 2002, ch. 105, § 1, p. 284; am. 2003, ch. 306, § 1, p. 841; am. 2005, ch. 132, § 2, p. 420; am. 2008, ch. 119, § 3, p. 334; am. 2016, ch. 289, § 10, p. 793.

## **STATUTORY NOTES**

### **Amendments.**

The 2008 amendment, by ch. 119, rewrote the section to the extent that a detailed comparison is impracticable.

The 2016 amendment, by ch. 289, substituted “state procurement act in chapter 92, title 67” for “purchasing laws in chapter 57, title 67” in subsection (2).

**Effective Dates.**

Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

**33-5504A. Governmental entity.** — (1) The Idaho digital learning academy shall be a governmental entity as provided in section 33-5502, Idaho Code. For the purposes of section 59-1302(15), Idaho Code, the Idaho digital learning academy created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-3622O, Idaho Code, sales to or purchases by the Idaho digital learning academy are exempt from payment of the sales and use tax. The Idaho digital learning academy, its employees and its board of directors are subject to the following provisions in the same manner as a traditional public school and the board of trustees of a school district:

- (a) Sections 18-1351 through 18-1362, Idaho Code, on bribery and corrupt influence, except as provided by section 33-5204A(2), Idaho Code;
- (b) Chapter 5, title 74, Idaho Code, on prohibitions against contracts with officers;
- (c) Chapter 4, title 74, Idaho Code, on ethics in government;
- (d) Chapter 2, title 74, Idaho Code, on open public meetings;
- (e) Chapter 1, title 74, Idaho Code, on disclosure of public records;
- (f) Section 33-1216, Idaho Code, on sick and other leave;
- (g) Section 33-1217, Idaho Code, on accumulation of unused sick leave;
- (h) Section 33-1218, Idaho Code, on sick leave in excess of statutory minimum amounts; and
- (i) Section 33-1228, Idaho Code, on severance allowance at retirement.

(2) The Idaho digital learning academy may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and other public schools, including those provided by chapter 9, title 6, Idaho Code.

(3) The Idaho digital learning academy shall secure insurance for liability and property loss.

(4) It shall be unlawful for:

(a) Any director to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the Idaho digital learning academy, or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection (4). The board of directors of the Idaho digital learning academy may accept and award contracts involving the Idaho digital learning academy to businesses in which the director or a person related to him by blood or marriage within the second degree of consanguinity has a direct or indirect interest, provided that the procedures set forth in section 18-1361 or 18-1361A, Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of the Idaho digital learning academy for deposit in any bank or trust company, or the lending of moneys by any bank or trust company to the Idaho digital learning academy, shall not be deemed to be a contract pertaining to the maintenance or conduct of the Idaho digital learning academy within the meaning of this section; nor shall the payment of compensation by the Idaho digital learning academy board of directors to any bank or trust company for services rendered in the transaction of any banking business with the Idaho digital learning academy board of directors be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(b) The board of directors of the Idaho digital learning academy to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or will require, the payment or delivery of any Idaho digital learning academy funds, moneys or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

(5) When any relative of any director, or relative of the spouse of a director related by affinity or consanguinity within the second degree, is to be considered for employment in the Idaho digital learning academy, such director shall abstain from voting in the election of such relative, and shall

be absent from the meeting while such employment is being considered and determined.

**History.**

**I.C., § 33-5504A**, as added by 2008, ch. 119, § 4, p. 335; am. 2009, ch. 55, § 3, p. 156; am. 2015, ch. 141, § 73, p. 379.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 55, in the section catchline, deleted “liability insurance” from the end; in the last sentence in the introductory paragraph in subsection (1), inserted “its employees”; and added subsections (1)(f) through (1)(i).

The 2015 amendment, by ch. 141, substituted “Chapter 5, title 74” for “Chapter 2, title 59” in paragraph (1)(b); substituted “Chapter 4, title 74” for “Chapter 7, title 59” in paragraph (1)(c); substituted “Chapter 2, title 74” for “Chapter 23, title 67” in paragraph (1)(d); and substituted “Chapter 1, title 74” for “Chapter 3, title 9” in paragraph (1)(e).

**Effective Dates.**

Section 4 of S.L. 2009, ch. 55 declared an emergency and made sections 1 and 3 of that act effective retroactively to July 1, 2008. Approved March 25, 2009.

**33-5504B. Expenditures — Budget.** — (1) There is hereby created in the state treasury the Idaho digital learning academy fund. The fund shall consist of appropriations, fees, grants, gifts or moneys from any other source. The state treasurer shall invest all idle moneys in the fund and interest earned on such investments shall be retained by the fund.

(2) On or before the first Monday in July, there will be held at the time and place determined by the Idaho digital learning academy board, a budget meeting and public hearing upon the proposed budget of the Idaho digital learning academy. Notice of the budget meeting and public hearing shall be posted at least ten (10) full days prior to the date of the meeting in at least one (1) conspicuous place to be determined by the Idaho digital learning academy board of directors. The place, hour and day of the hearing shall be specified in the notice, as well as the place where such budget may be examined prior to the hearing. On or before the first Monday in July a budget for the Idaho digital learning academy shall be agreed upon and approved by the majority of the Idaho digital learning academy board of directors.

**History.**

I.C., § 33-5504B, as added by 2008, ch. 119, § 5, p. 337.

**STATUTORY NOTES**

**Cross References.**

State treasurer, § 67-1201 et seq.

**33-5505. Definitions.** — As used in this chapter:

(1) “Academy board,” also referred to in this chapter as “the board” means the board of directors of the Idaho digital learning academy as such board is created in [section 33-5503, Idaho Code](#).

(2) “Host district” means an Idaho school district where the fiscal operations of the Idaho digital learning academy are housed until January 1, 2009.

(3) “Idaho digital learning academy” means an online educational program organized as a fully accredited school with statewide capabilities for delivering accredited courses to Idaho resident students at no cost to the student unless the student enrolls in additional courses beyond full-time enrollment. Participation in the academy by public school students shall be in compliance with academy and local school district policies. Adult learners and out-of-state students shall pay tuition commensurate with rates established by the state board with the advice of the superintendent, and such funds shall be included in the budget and audit of the academy’s fiscal records.

(4) “State board” means the Idaho state board of education. The board is authorized and directed, with the advice and recommendation of the academy board of directors, to promulgate rules to implement the provisions of this chapter.

(5) “Superintendent” means the Idaho state superintendent of public instruction.

**History.**

[I.C., § 33-5505](#), as added by 2002, ch. 105, § 1, p. 284; am. 2003, ch. 306, § 2, p. 841; am. 2005, ch. 132, § 3, p. 420; am. 2008, ch. 119, § 6, p. 337.

**STATUTORY NOTES**

**Cross References.**

State board of education, § 33-101 et seq.

State superintendent of public instruction, § 67-1501 et seq.

**Amendments.**

The 2008 amendment, by ch. 119, in subsection (2), added “until January 1, 2009”; and in the first sentence in subsection (3), deleted “secondary” following the first occurrence of “accredited” and “in grades seven (7) through twelve (12)” following “resident students.”

**Effective Dates.**

Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.



**33-5506. Courses — Development — Brokered — Credit — Accreditation.** — Online courses shall reflect state of the art in multimedia-based digital learning. Courses offered shall be of high quality in appearance and presentation, and shall be designed to meet the needs of all students regardless of the student's level of learning.

(1) All courses developed under the auspices of the academy are the property of the academy. Courses may be developed by qualified Idaho teachers who possess the necessary technical background and instructional expertise. Such persons may also be hired to deliver the course online. Nothing shall prevent the board from providing additional training to teachers in the development and online delivery of courses.

(2) At the discretion of the board with consideration for necessity, convenience and cost effectiveness, brokered courses developed by outside sources may be obtained for use by the academy; however, such courses shall be taught online by Idaho teachers unless special circumstances require a waiver of this requirement.

(3) Grade percentages in courses shall be based on such criteria as mastery of the subject, demonstrated competency, and meeting the standards set for each course.

(4) All courses shall meet criteria established by the state of Idaho as necessary for accreditation of the academy.

### **History.**

**I.C., § 33-5506**, as added by 2002, ch. 105, § 1, p. 284; am. 2008, ch. 119, § 7, p. 338.

## **STATUTORY NOTES**

### **Amendments.**

The 2008 amendment, by ch. 119, near the end of subsection (2), deleted “determined by the director” following “special circumstances”; in subsection (3), substituted “Grade percentages” for “Credit earned,” and deleted “in contrast to credit earned in a traditional classroom based on time

spent in the classroom” from the end; and in subsection (4), deleted “and the northwest accreditation association” following “state of Idaho.”

**Effective Dates.**

Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

**33-5507. Registration — Accountability.** — (1) A student may register with the academy upon recommendation from a traditional school counselor or administrator, or may register directly with the academy if there is no current public school affiliation. However, in order for coursework completed through the academy to be recorded on the student's transcript, the student shall indicate which school is to receive and record credits earned.

(2) Students who register for courses shall provide the name of a responsible adult who shall be the contact person for the academy in situations which require consultation regarding the student's conduct and performance. A designated responsible adult for students with a school affiliation may be a teacher, a counselor or a distance learning coordinator. For home schooled students, a parent or guardian may be designated.

(3) Policies of accountability as established by rule of the state board shall address the special conditions which exist in an environment where there is reduced face-to-face contact between student and teacher; where students access courses at any time of day, from any location and at the student's own pace; where online etiquette and ethics should be clearly understood and required of all participants; and where all students' participation is monitored by online teachers and academy personnel.

(4) Policies shall be established by rule of the state board for student-related issues including taking exams, proctored or unproctored; ensuring that the work is being done by the student; and ensuring that ethical conduct and proper etiquette are always observed by all participants.

### **History.**

**I.C., § 33-5507**, as added by 2002, ch. 105, § 1, p. 284; am. 2005, ch. 132, § 4, p. 420; am. 2008, ch. 119, § 8, p. 338.

## **STATUTORY NOTES**

### **Amendments.**

The 2008 amendment, by ch. 119, deleted “secondary” preceding “school” in the last sentence in subsection (1).

**Effective Dates.**

Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

**33-5508. Funding.** — (1) Funding for the infrastructure of the program shall be provided pursuant to section 33-1020, Idaho Code. The superintendent shall disburse the funds to the Idaho digital learning academy board of directors who shall use the moneys to develop courses and maintain operations of the academy.

(2) Additional funding for course offerings through the Idaho digital learning academy shall be added to the Idaho digital learning academy budget by charging fees to the school districts for student participation. These fees shall be established annually by the Idaho digital learning academy board of directors and shall reflect the various types of course offerings available. Fees for summer school and professional development offerings to students and adults shall also be established by the Idaho digital learning academy board of directors.

### **History.**

**I.C., § 33-5508**, as added by 2002, ch. 105, § 1, p. 284; am. 2003, ch. 306, § 3, p. 841; am. 2007, ch. 353, § 13, p. 1045.

## **STATUTORY NOTES**

### **Cross References.**

State superintendent of public instruction, § 67-1501 et seq.

### **Amendments.**

The 2007 amendment, by ch. 353, substituted “pursuant to **section 33-1020, Idaho Code**” for “from an annual budget request to the legislature from the superintendent of public instruction”.

### **Legislative Intent.**

Section 6 of S.L. 2007, ch. 353 provided: “It is legislative intent that the Idaho Safe and Drug-Free School Program shall include the following:

“(1) Districts will develop a policy and plan which will provide a guide for their substance abuse problems.

“(2) Districts will have an advisory board to assist each district in making decisions relating to the programs.

“(3) The districts’ substance abuse programs will be comprehensive to meet the needs of all students. This will include prevention programs, student assistance programs that address early identification and referral, and aftercare.

“(4) Districts shall submit an annual evaluation of their programs to the State Department of Education as to the effectiveness of their programs.”

### **Compiler’s Notes.**

Section 13 of S.L. 2013, ch. 326 provide: “The Idaho Digital Learning Academy (IDLA), created pursuant to Chapter 55, Title 33, Idaho Code, shall utilize state appropriated funds for the period July 1, 2013, through June 30, 2014, to achieve the following:

“(1) Tuition charged by IDLA to Idaho students shall not exceed \$100 per enrollment.

“(2) Provide remedial coursework for students failing to achieve proficiency in one (1) or more areas of the Idaho Standards Achievement Test.

“(3) Pursuant to the fiscal impact statement for the State Board of Education rule, [IDAPA 08.02.03](#), Docket Number 08-0203-0605, provide advanced learning opportunities for students.

“(4) Pursuant to State Board of Education rule, [IDAPA 08.02.03](#), Docket Number 08-0203-0605, work with institutions of higher education to provide dual credit coursework.

“The preceding list shall not be construed as excluding other instruction and training that may be provided by the Idaho Digital Learning Academy.”

### **Effective Dates.**

Section 2 of S.L. 2002, ch. 105 declared an emergency. Approved March 19, 2002.

**33-5509. Digital learning academy a state department for purposes of risk management.** — For risk management purposes, the Idaho digital learning academy shall be considered a state department for purposes of risk management pursuant to chapter 57, title 67, Idaho Code, and the department of administration shall treat it as such.

**History.**

I.C., § 33-5509, as added by 2006, ch. 358, § 1, p. 1091.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 2006, ch. 358 declared an emergency. Approved April 7, 2006.





## **CHAPTER 56**

### **EDUCATION OPPORTUNITY RESOURCE ACT**

Section.

33-5601. Short title.

33-5602. Purpose, findings and legislative intent — Definitions.

33-5603. Education opportunity resource committee — Members and meetings.

33-5604. Education opportunity resource committee — Powers and duties.

33-5605. Education opportunity resource act — State department of education duties — Rulemaking.

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### **STATUTORY NOTES**

#### **Compiler's Notes.**

Both S.L. 2016, Chapter 143 and S.L. 2016, Chapter 182 enacted provisions designated as chapter 56, title 33, Idaho Code. The provisions from S.L. 2016, Chapter 182 were retained as enacted. The provisions from S.L. 2016, Chapter 143 were redesignated by the compiler, through the use of brackets, as chapter 60, title 33, Idaho Code. That redesignation was made permanent by S.L. 2017, ch. 58, § 15.

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**33-5601. Short title.** — This chapter shall be known and may be cited as the “Education Opportunity Resource Act.”

**History.**

**I.C., § 33-5601**, as added by 2016, ch. 182, § 3, p. 492.

**STATUTORY NOTES**

**Prior Laws.**

Former Chapter 56 of Title 33, Idaho Opportunity Scholarship Program, which comprised the following sections, was repealed by S.L. 2013, ch. 72, § 9, effective July 1, 2014. See now § 33-4301 et seq.

33-5601. Short title. [**I.C., § 33-5601**, as added by S.L. 2007, ch. 259, § 1, p. 769.]

33-5602. Legislative intent. **I.C., § 33-5602**, as added by S.L. 2007, ch. 259, § 1, p. 769.]

33-5603. Purposes. [**I.C., § 33-5603**, as added by S.L. 2007, ch. 259, § 1, p. 769.]

33-5604. Definitions. [**I.C., § 33-5604**, as added by S.L. 2007, ch. 259, § 1, p. 769.]

33-5605. Academic and financial eligibility. [**I.C., § 33-5605**, as added by S.L. 2007, ch. 259, § 1, p. 769.]

33-5606. Application process. [**I.C., § 33-5606**, as added by S.L. 2007, ch. 259, § 1, p. 769.]

33-5607. Selection process — Amount of awards — Conditions. [**I.C., § 33-5607**, as added by S.L. 2007, ch. 259, § 1, p. 769.]

33-5608. Opportunity scholarship program account. [**I.C., § 33-5608**, as added by S.L. 2007, ch. 259, § 1, p. 769; am S.L. 2012, ch. 34, § 1, p. 105.]

**33-5602. Purpose, findings and legislative intent — Definitions. — (1)**

The purpose of this act is to establish a resource for Idaho's education and library system in providing broadband, wireless local area network (LAN) and related services to students. The legislature finds that Idaho benefits from a consistent and adequate bandwidth connection to and between its districts and schools, inclusive of grades K through 12, and to its libraries. It is the intent of the legislature that:

(a) State resources be made available to support Idaho's E-rate eligible entities with technical, E-rate, security, contracting and procurement guidance, and funding distribution; (b) E-rate eligible entities shall have the ability to collaborate regionally and intrastate for broadband and related services; (c) Districts shall have the ability to collaborate regionally and intrastate for wireless LAN services; and (d) E-rate eligible entities apply for and pursue, in good faith, E-rate funding.

(2) As used in this chapter:

(a) "Districts" means Idaho public schools grades K through 12, the Idaho digital learning academy, the Idaho department of juvenile corrections' education programs and the school for the deaf and the blind.

(b) "E-rate" means the schools and libraries program of the universal service fund that is administered by the universal service administrative company under the direction of the federal communications commission.

(c) "E-rate eligible entities" means Idaho public schools grades K through 12, the Idaho digital learning academy, the Idaho department of juvenile corrections education programs, the school for the deaf and the blind and the Idaho public libraries.

**History.**

I.C., § 33-5602, as added by 2016, ch. 182, § 3, p. 492; am. 2017, ch. 141, § 1, p. 334.

**STATUTORY NOTES**

**Cross References.**

Department of juvenile corrections education programs, § 20-504A.

Idaho digital learning academy, § 33-5501 et seq.

Idaho public libraries, § 33-2601 et seq.

School for the deaf and the blind, § 33-3403.

**Prior Laws.**

Former § 33-5602 was repealed. See Prior Laws, § 33-5601.

**Amendments.**

The 2017 amendment, by ch. 141, in subsection (1), in the introductory paragraph, inserted “wireless local area network (LAN)” in the first sentence and substituted “and between its districts and schools” for “its schools” in the second sentence, inserted present paragraph (c) and redesignated former paragraph (c) as paragraph (d); and inserted present paragraph (2)(a), redesignating the subsequent paragraphs accordingly.

**Compiler’s Notes.**

The term “this act” in the first sentence in the introductory paragraph in subsection (1) refers to S.L. 2016, Chapter 182, which is codified as §§ 33-125, 33-125A, and 33-5601 to 33-5605. The term probably should read “this chapter,” being chapter 56, title 33, Idaho Code.

For more information on the universal service fund, referred to in paragraph (2)(b) and administered by the federal communications commission, see <https://www.fcc.gov/general/universal-service-fund>.

For more information on the universal service administrative company, referred to in paragraph (2)(b), see <https://www.usac.org>.

**33-5603. Education opportunity resource committee — Members and meetings.** — (1) There is hereby established in the state department of education the education opportunity resource committee. The committee shall consist of the following eight (8) members:

- (a) One (1) member shall be the state superintendent of public instruction or the superintendent's designee;
- (b) One (1) member shall be appointed by the state board of education;
- (c) Three (3) members shall be appointed by the Idaho association of school administrators as follows:
  - (i) One (1) member who is a superintendent from a school district with fewer than one thousand (1,000) students enrolled, or the superintendent's designee;
  - (ii) One (1) member who is a superintendent from a school district with between one thousand (1,000) and four thousand nine hundred ninety-nine (4,999) students enrolled, or the superintendent's designee; and
  - (iii) One (1) member who is a superintendent from a school district with five thousand (5,000) or more students enrolled, or the superintendent's designee;
- (d) One (1) member shall be the state librarian or the state librarian's designee; and
- (e) Two (2) members shall be school technology personnel appointed by the Idaho education technology association.

(2) The committee shall elect a chairperson and a vice chairperson who shall each hold such position for two (2) year terms and who may be reelected. Members of the committee shall serve four (4) year terms. Vacancies shall be filled by the relevant appointing authority for the remaining term.

(3) The committee shall meet at least once quarterly until July 1, 2018, after which date the committee shall meet at least once annually.

(4) All meetings of the committee shall be held in accordance with the state open meetings law set forth in chapter 2, title 74, Idaho Code.

**History.**

I.C., § 33-5603, as added by 2016, ch. 182, § 3, p. 492.

**STATUTORY NOTES**

**Cross References.**

State board of education, § 33-101.

State librarian, § 33-2504.

State superintendent of public instruction, § 67-1501 et seq.

**Prior Laws.**

Former § 33-5603 was repealed. See Prior Laws, § 33-5601.

**Compiler's Notes.**

For more information on the Idaho association of school administrators, referred to in the introductory paragraph in paragraph (1)(c), see <https://www.idschadm.org>.

For more information on the Idaho education technology association, referred to in paragraph (1)(e), see <http://www.idahoedtech.org>.

**33-5604. Education opportunity resource committee — Powers and duties.** — In carrying out its powers and duties set forth in this section, the education opportunity resource committee shall focus on the broadband, wireless LAN and related services needs of all E-rate eligible entities. At a minimum, the committee shall:

(1) Make budget and policy recommendations to the state department of education regarding:

- (a) Broadband parameters;
- (b) Wireless LAN parameters;
- (c) Incentives for E-rate eligible entities to obtain the most appropriate service that best fits such entities' broadband needs and that is fiscally responsible;
- (d) Incentives for districts to obtain the most appropriate service that best fits their wireless LAN needs and that is fiscally responsible; and
- (e) The minimum and maximum service levels, the quality of services and the minimum per student or person internet and wireless LAN levels that contracts must adhere to for E-rate eligible entities to be eligible for state reimbursement.

(2) Establish reimbursement methodology that includes, but is not necessarily limited to, the following components:

- (a) Distribution of appropriated moneys to E-rate eligible entities that have received E-rate funding. Distribution of such moneys must be in an amount equal to the non-E-rate reimbursed cost of internet services;
- (b) If E-rate funding is not available to an E-rate eligible entity for any reason, other than a failure of the entity to apply in good faith for available E-rate funding, reimburse the entity for its internet service costs;
- (c) Distribution of appropriated moneys remaining, after internet services are fully funded, for wide area networks (WANs). If necessary, the

committee shall create an equalization formula for WAN distributions;  
and

(d) Distribution of appropriated moneys for wireless LAN service to districts that either have received E-rate funding or have applied in good faith for E-rate funding.

(3) Compile and analyze broadband utilization statistics from E-rate eligible entities to determine the levels of internet services necessary for such entities and report the statistics to the state department of education, and E-rate eligible entities shall cooperate with the committee in carrying out its duty to compile and analyze such information;

(4) Advise and recommend resources to assist the state department of education in carrying out its responsibility to provide E-rate application assistance and support to E-rate eligible entities;

(5) Not provide legal advice;

(6) Collaborate with other relevant governmental and nongovernmental entities to ensure best practices in broadband and wireless LAN are used and to recommend the terms of contracts for broadband, wireless LAN and related services; and

(7) Ensure compliance with appropriate purchasing laws.

### **History.**

I.C., § 33-5604, as added by 2016, ch. 182, § 3, p. 492; am. 2017, ch. 141, § 2, p. 334.

## **STATUTORY NOTES**

### **Cross References.**

State department of education, § 33-125.

### **Prior Laws.**

Former § 33-5604 was repealed. See Prior Laws, § 33-5601.

### **Amendments.**

The 2017 amendment, by ch. 141, in the introductory paragraph, inserted “wireless LAN” in the first sentence; inserted present paragraphs (1)(b) and



(1)(d), redesignating the remaining paragraphs accordingly; inserted “for any reason, other than a failure of the entity to apply in good faith for available E-rate funding” in paragraph (2)(b); added paragraphs (2)(c) and (2)(d); and in subsection (6), inserted “and wireless LAN” and “wireless LAN”.

**33-5605. Education opportunity resource act — State department of education duties — Rulemaking.** — (1) The state department of education shall:

(a) Distribute appropriated moneys to E-rate eligible entities for reimbursement for the cost of internet service in accordance with the methodology established by the education opportunity resource committee; (b) Authorize funding increases for internet service levels when an E-rate eligible entity consistently exceeds utilization benchmarks established by the education opportunity resource committee during school or business days and hours, provided adequate funding is available; and (c) Provide technical, E-rate, security, contracting and procurement guidance and assistance to E-rate eligible entities at any such entity's request.

(2) The state board of education may promulgate rules in compliance with chapter 52, title 67, Idaho Code, to implement the provisions of this chapter. In promulgating such rules, the board shall collaborate with the education opportunity resource committee.

**History.**

I.C., § 33-5605, as added by 2016, ch. 182, § 3, p. 492.

**STATUTORY NOTES**

**Cross References.**

Education opportunity resource committee, § 33-5603.

State department of education, § 33-125.

**Prior Laws.**

Former § 33-5605 was repealed. See Prior Laws, § 33-5601.



**CHAPTER 57**  
**INTERSTATE COMPACT ON EDUCATIONAL**  
**OPPORTUNITY FOR MILITARY CHILDREN**

Section.

33-5701. Interstate compact on educational opportunity for military children.

**33-5701. Interstate compact on educational opportunity for military children.** — The “Interstate Compact on Educational Opportunity for Military Children” is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR  
MILITARY CHILDREN

## ARTICLE I

### PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools and military families under this

compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student.

## **ARTICLE II**

### **DEFINITIONS**

As used in this compact, unless the context clearly requires a different construction:

A. “Active duty” means: full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to [10 U.S.C. sections 1209 and 1211](#).

B. “Children of military families” means: a school-aged child(ren), enrolled in kindergarten through twelfth grade, in the household of an active duty member.

C. “Compact commissioner” means: the voting representative of each compacting state appointed pursuant to article VIII of this compact.

D. “Deployment” means: the period one (1) month prior to the service members’ departure from their home station on military orders through [through] six (6) months after return to their home station.

E. “Education(al) records” means: those official records, files, and data directly related to a student and maintained by the school or local education agency including, but not limited to, records encompassing all the material kept in the student’s cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. “Extracurricular activities” means: a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the

local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. “Interstate Commission on Educational Opportunity for Military Children” means: the commission that is created under article IX of this compact, which is generally referred to as the interstate commission.

H. “Local education agency” means: a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

I. “Member state” means: a state that has enacted this compact.

J. “Military installation” means: a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the department of defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other United States territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. “Nonmember state” means: a state that has not enacted this compact.

L. “Receiving state” means: the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. “Rule” means: a written statement by the interstate commission promulgated pursuant to article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

N. “Sending state” means: the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. “State” means: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam,

American Samoa, the Northern Marianas Islands and any other United States territory.

P. “Student” means: the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.

Q. “Transition” means: 1) the formal and physical process of transferring from school to school; or 2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. “Uniformed service(s)” means: the army, navy, air force, marine corps, and coast guard as well as the commissioned corps of the national oceanic and atmospheric administration, and public health services.

S. “Veteran” means: a person who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

## **ARTICLE III**

### **APPLICABILITY**

A. Except as otherwise provided in section B. of this article, this compact shall apply to the children of:

1. Active duty members of the uniformed services as defined in this compact, including members of the national guard and reserve on active duty orders pursuant to [10 U.S.C. section 1209](#) and [1211](#);
2. Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and
3. Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:



1. Inactive members of the national guard and military reserves;
2. Members of the uniformed services now retired, except as provided in section A. of this article;
3. Veterans of the uniformed services, except as provided in section A. of this article; and
4. Other United States department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

## **ARTICLE IV**

### **EDUCATIONAL RECORDS AND ENROLLMENT**

A. Unofficial or “hand-carried” educational records. In the event that official educational records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the interstate commission. Upon receipt of the unofficial educational records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official educational records/transcripts. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student’s official educational records from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official educational records to the school in the receiving state within ten (10) days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

C. Immunizations. Compacting states shall give thirty (30) days from the date of enrollment, or within such time as is reasonably determined under the rules promulgated by the interstate commission, for students to obtain any immunization(s) required by the receiving state. For a series of

immunizations, initial vaccinations must be obtained within thirty (30) days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

D. Kindergarten and first grade entrance age. Except as provided for elsewhere in this subsection D., students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition. Provided however, that the provisions of [section 33-201, Idaho Code](#), relating to requirements for kindergarten and first grade shall apply. A student who has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on his or her validated level from an accredited school in the sending state.

## **ARTICLE V**

### **PLACEMENT AND ATTENDANCE**

A. Course placement. When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes, but is not limited to, honors, international baccalaureate, advanced placement, vocational, technical and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s).

B. Educational program placement. The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state

or participation/placement in like programs in the sending state. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services. 1) In compliance with the federal requirements of the individuals with disabilities education act (IDEA), [20 U.S.C.A. section 1400 et seq.](#), the receiving state shall initially provide comparable services to a student with disabilities based on his or her current individualized education program (IEP); and 2) In compliance with the requirements of section 504 of the rehabilitation act, [29 U.S.C.A. section 794](#), and with title II of the Americans with disabilities act, [42 U.S.C.A. sections 12131-12165](#), the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or title II plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility. Local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in courses/programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities. A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

## **ARTICLE VI**

### **ELIGIBILITY**

A. Eligibility for enrollment.

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation. State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

## **ARTICLE VII**

### **GRADUATION**

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

A. Waiver requirements. Local education agency administrative officials shall waive specific courses required for graduation if similar coursework has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams. States shall accept: 1) exit or end-of-course exams required for graduation from the sending state; or 2) national norm-referenced achievement tests; or 3) alternative testing, in lieu of testing

requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of article VII, section C. shall apply.

C. Transfers during senior year. Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one (1) of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with sections A. and B. of this article.

## **ARTICLE VIII**

### **STATE COORDINATION**

A. Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and interstate commission activities. While each member state may determine the membership of its own state council, its membership must include at least: the state superintendent of education, a superintendent of a school district with a high concentration of military children, a representative from a military installation, one (1) representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the state council.

B. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex officio members of the state council, unless either is already a full voting member of the state council.

## **ARTICLE IX**

### **INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN**

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one (1) interstate commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the interstate commission is entitled to one (1) vote.

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the interstate commission, the governor or state council may delegate voting authority to another person from their state for a specified meeting.

4. The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

C. Consist of ex officio, nonvoting representatives who are members of interested organizations. Such ex officio members, as defined in the bylaws, may include, but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States department of defense, the education commission of the states, the interstate agreement on the qualification of educational personnel and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the interstate commission and such other members of the interstate commission as determined by the bylaws. Members of the executive committee shall serve a one (1) year term. Members of the executive committee shall be entitled to one (1) vote each. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The United States department of defense shall serve as an ex officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds (2/3) vote that an open meeting would be likely to:

1. Relate solely to the interstate commission's internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by federal and state statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing a person of a crime or formally censuring a person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes; or
7. Specifically relate to the interstate commission's participation in a civil action or other legal proceeding.

H. Shall cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission.

I. Shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. Shall create a process that permits military officials, education officials and parents to inform the interstate commission if and when there are



alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the interstate commission or any member state.

## **ARTICLE X**

### **POWERS AND DUTIES OF THE INTERSTATE COMMISSION**

The interstate commission shall have the following powers:

A. To provide for dispute resolution among member states.

B. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules and actions.

D. To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means including, but not limited to, the use of judicial process.

E. To establish and maintain offices which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire or contract for services of personnel.

H. To establish and appoint committees including, but not limited to, an executive committee as required by article IX, section E., which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel

policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the interstate commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

P. To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

## **ARTICLE XI**

### **ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION**

A. The interstate commission shall, by a majority of the members present and voting, within twelve (12) months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including, but not limited to:

1. Establishing the fiscal year of the interstate commission;
2. Establishing an executive committee and such other committees as may be necessary;
3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the interstate commission;
4. Providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each such meeting;
5. Establishing the titles and responsibilities of the officers and staff of the interstate commission;
6. Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.
7. Providing “start up” rules for initial administration of the compact.

B. The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson’s absence or disability, the vice-chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the interstate commission.

C. Executive committee, officers and personnel.

1. The executive committee shall have such authority and duties as may be set forth in the bylaws including, but not limited to:

- a. Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;
- b. Overseeing an organizational structure within, and appropriate procedures for, the interstate commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and
- c. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the interstate commission.

2. The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

D. The interstate commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered

to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

## **ARTICLE XII**

### **RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION**

A. Rulemaking authority. The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond

the scope of the purposes of this act, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

B. Rulemaking procedure. Rules shall be made pursuant to a rulemaking process that substantially conforms to the model state administrative procedure act of 1981, as amended, as may be appropriate to the operations of the interstate commission.

C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

## **ARTICLE XIII**

### **OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION**

A. Oversight 1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission.

3. The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in

the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, this compact or promulgated rules.

B. Default, technical assistance, suspension and termination. If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:

1. Provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default.
2. Provide remedial training and specific technical assistance regarding the default.
3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.
4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.
5. The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination, including obligations, the performance of which extends beyond the effective date of suspension or termination.
6. The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

7. The defaulting state may appeal the action of the interstate commission by petitioning the United States district court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute resolution. 1. The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement. 1. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

## **ARTICLE XIV**

### **FINANCING OF THE INTERSTATE COMMISSION**

A. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.



B. The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

C. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall by [be] audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

## **ARTICLE XV**

### **MEMBER STATES, EFFECTIVE DATE AND AMENDMENT**

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten (10) of the states. The effective date shall be no earlier than December 1, 2007. Thereafter, it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

C. The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective

and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

## **ARTICLE XVI**

### **WITHDRAWAL AND DISSOLUTION**

A. Withdrawal. 1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member jurisdiction.

3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

B. Dissolution of compact. 1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and

affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

## **ARTICLE XVII**

### **SEVERABILITY AND CONSTRUCTION**

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

## **ARTICLE XVIII**

### **BINDING EFFECT OF COMPACT AND OTHER LAWS**

A. Other laws. 1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Binding effect of the compact. 1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

2. All agreements between the interstate commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

### **History.**

I.C., § 33-5701, as added by 2013, ch. 301, § 2, p. 792.

## STATUTORY NOTES

### Compiler's Notes.

With the passage and approval of S.L. 2013, Chapter 301, Idaho became the 45th state to adopt the interstate compact on educational opportunity for military children. All 50 states have now adopted the compact. See <http://www.mic3.net>.

For model state administrative procedure act of 1981, referred to in Article XII(B), see <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=3ab796d4-9636-d856-48e5-b638021eb54d&forceDialog=0>.

The bracketed insertions in Article II. D and Article XIV. D were added by the compiler to correct the enacting legislation.

The term “this act” in the last sentence in Article XII. A refers to S.L. 2013, Chapter 301, which is codified as this section.

The abbreviations and letters enclosed in parentheses so appeared in the law as enacted.

## RESEARCH REFERENCES

**A.L.R.** — Construction and Application of 34 C.F.R. § 300.502, and Prior Codifications, Providing for Independent Educational Evaluation under Individuals With Disabilities Education Act, (20 U.S.C. §§ 1400 et seq.). 10 A.L.R. Fed. 3d 2.



## **CHAPTER 58**

### **LOCAL INNOVATION SCHOOL ACT**

Section.

33-5801. Local innovation school act.

33-5802. Definitions.

33-5803. Eligibility to participate — Requirements and exemptions.

33-5804. Innovation school agreement.

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### **STATUTORY NOTES**

#### **Compiler's Notes.**

Both S.L. 2016, Chapter 192 and S.L. 2016, Chapter 305 enacted provisions designated as chapter 58, title 33, Idaho Code. The provisions from S.L. 2016, Chapter 305 were retained as enacted. The provisions from S.L. 2016, Chapter 192 were redesignated by the compiler, through the use of brackets, as chapter 59, title 33, Idaho Code. That redesignation was made permanent by S.L. 2017, ch 58, § 15.

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**33-5801. Local innovation school act.** — There is hereby established the local innovation school act. Participating schools and districts will evaluate existing laws and administrative rules to receive flexibility from laws and policies that impede local autonomy, allowing them to be agile, innovative and empowered to adapt to local circumstances.

**History.**

I.C., § 33-5801, as added by 2016, ch. 305, § 1, p. 859.

**33-5802. Definitions.** — As used in this chapter:

(1) “Board” means the governing body of a school district or public charter school.

(2) “Innovation school” means a public school participating in the local innovation school act.

(3) “Innovation school agreement” means a written agreement between the innovation school team and the board establishing the innovation school.

(4) “Innovation school team” means the combination of individuals responsible for the operations of an innovation school.

**History.**

I.C., § 33-5802, as added by 2016, ch. 305, § 1, p. 859.

**STATUTORY NOTES**

**Cross References.**

Local innovation school act, §n 33-5801.



**33-5803. Eligibility to participate — Requirements and exemptions.**

— (1) Up to ten (10) public schools per year for each of school years 2016 through 2021, totaling not more than fifty (50) schools, are eligible to participate in the local innovation school act by following the processes set forth in section 33-5804, Idaho Code. If more than ten (10) schools seek to establish an innovation school in any single year, the first ten (10) schools to notify the state board of education pursuant to section 33-5804, Idaho Code, shall be established as innovation schools.

(2) The following shall apply to an innovation school: (a) State, federal and local laws prohibiting discrimination; (b) Laws governing safety including, but not limited to, sections 33-122 and 33-130, Idaho Code; (c) [Section 33-119, Idaho Code](#), as such section applies to secondary schools accreditation; and (d) [Section 33-5204, Idaho Code](#), if the innovation school is an existing public charter school authorized by the school district.

(3) Except as otherwise provided in subsection (2) of this section, pursuant to the terms of the innovation school agreement, innovation schools may be exempted from the following: (a) Idaho Code statutes applicable to a school board or school district; (b) Rules promulgated or guidelines adopted by the state board of education or state department of education; and (c) Local district policies, including terms and conditions of employment.

**History.**

[I.C., § 33-5803](#), as added by 2016, ch. 305, § 1, p. 859.

**STATUTORY NOTES**

**Cross References.**

Local innovation school act, §n 33-5801.

State board of education, § 33-101.

State department of education, § 33-125.

**33-5804. Innovation school agreement.** — (1) An innovation school may be established by a written innovation school agreement between:

(a) A majority of the teachers at the school seeking to establish an innovation school, in cooperation with a principal or a superintendent, or both;

(b) A board; and

(c) The authorizer if the innovation school is a public charter school.

(2) The innovation school agreement shall include:

(a) A statement that the innovation school is considered to be part of the school district and not considered a separate local education agency;

(b) A provision that the district shall distribute estimated state, federal and local funding to the innovation school consistent with the amounts it distributes to other schools in the district;

(c) The performance goals and accountability metrics agreed upon for the innovation school;

(d) The duration of the agreement, which shall be for not less than three (3) years and include automatic renewal at the option of the innovation school team if all conditions under the agreement are satisfied;

(e) Grounds for termination of the agreement, including the right of termination if the innovation school team fails to:

(i) Comply with the conditions or procedures established in the innovation school agreement;

(ii) Meet generally accepted fiscal management and government accounting principles;

(iii) Comply with applicable laws; or

(iv) Meet the educational goals set forth in the innovation school agreement;

(f) If the innovation school is an existing public charter school authorized by the district, a statement regarding which provisions of chapter 52 of

this title shall apply;

(g) A provision that specifies that the innovation school will administer the Idaho standards achievement test;

(h) A statement that the innovation school will meet content standards as set forth in rule promulgated by the state board of education; and

(i) A statement specifying how graduation requirements will be addressed.

(3) The board shall notify the state board of education within thirty (30) days after entering into an innovation school agreement to establish an innovation school. Upon receiving notification, the state board of education shall notify the state department of education, and the state department of education shall, for school years starting after the date of the agreement:

(a) Within sixty (60) days of notification, distribute ten thousand dollars (\$10,000) to the innovation school team to be used for planning purposes;

(b) Treat the innovation school as part of the local district for purposes of state and national assessments; and

(c) Treat the innovation school in the same manner as a school operated by the local district when calculating the total amount of state and federal funding to be distributed to the school district.

(4) For as long as an innovation school team operates an innovation school:

(a) The innovation school team may use the school building, the accompanying real property and the building's contents, equipment and supplies, unless otherwise provided in the innovation school agreement.

(b) The school district shall provide the innovation school with transportation, building and grounds maintenance and repair, and access to funds consistent with that afforded other schools in the same district.

(c) With the exception of funds described in subsection (3)(a) of this section, an innovation school is not entitled to any state funding not afforded other district schools.

(d) If an innovation school team contracts with a school district for goods or services, the school district may not charge more for the goods or services than the school district pays for the goods or services.

(5) The innovation school team shall have full operational autonomy to run the innovation school as provided in the innovation school agreement.

(6) Employees of an innovation school may organize and create collectively bargained working conditions with the innovation school team, consistent with the principles, vision, goals and essential characteristics of the innovation school.

(7) Individuals employed by an innovation school are entitled to participate in the public employee retirement system, federal social security, unemployment insurance, worker's compensation insurance and health insurance.

(8) If an agreement is terminated pursuant to subsection (2)(e) of this section, then the affected school shall revert to the type of school it was immediately before becoming an innovation school and shall thereby be subject to all applicable laws, rules, guidelines and policies.

### **History.**

I.C., § 33-5804, as added by 2016, ch. 305, § 1, p. 859.

## **STATUTORY NOTES**

### **Cross References.**

Public employees retirement system, § 59-1301 et seq.

State board of education, § 33-101.

State department of education, § 33-125.

### **Compiler's Notes.**

For additional information on the Idaho standards achievement act, referred to in paragraph (2)(g), see <https://www.sde.idaho.gov/assessment/isat-cas>.



## **CHAPTER 59**

### **IDAHO SCHOOL SAFETY AND SECURITY ACT**

Section.

33-5901. Short title.

33-5902. Legislative intent.

33-5903. Definition.

33-5904. Office of school safety and security.

33-5905. Idaho school safety and security advisory board.

33-5906. Powers and duties of the Idaho school safety and security advisory board.

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### **STATUTORY NOTES**

#### **Compiler's Notes.**

Both S.L. 2016, Chapter 192 and S.L. 2016, Chapter 305 enacted provisions designated as chapter 58, title 33, Idaho Code. The provisions from S.L. 2016, Chapter 305 were retained as enacted. The provisions from S.L. 2016, Chapter 192 were redesignated by the compiler, through the use of brackets, as chapter 59, title 33, Idaho Code. That redesignation was made permanent by S.L. 2017, ch. 58, § 16.

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**33-5901. Short title.** — This chapter shall be known and may be cited as the “Idaho School Safety and Security Act.”

**History.**

**I.C., § 33-5801**, as added by 2016, ch. 192, § 1, p. 534; am. 2017, ch. 58, § 16, p. 91.

**STATUTORY NOTES**

**Amendments.**

The 2017 amendment, by ch. 58, renumbered this section from § 33-5801.

**33-5902. Legislative intent.** — It is the intent of the legislature that the purpose of this chapter is to:

(1) Promote the safety and security of the students attending the public educational institutions of the state; (2) Provide recommendations, systems and training to assist public educational institutions at all levels for the safety and security of students; (3) Enhance the safety and security resources available to public educational institutions; (4) Ensure that periodic security assessments of statewide public educational institutions are conducted and reported; (5) Ensure that surveys are conducted and research information is reported to appropriate parties; (6) Promote the use of technical methods, devices and improvements to address school security; (7) Encourage the recognition of security design to be incorporated in future construction or renovation of public educational institutions; and (8) Provide written reports of security assessments to appropriate school administrative authorities.

**History.**

I.C., § 33-5802, as added by 2016, ch. 192, § 1, p. 534; am. 2017, ch. 58, § 16, p. 91.

**STATUTORY NOTES**

**Amendments.**

The 2017 amendment, by ch. 58, renumbered this section from § 33-5802.



**33-5903. Definition.** — For the purposes of this chapter, “public educational facility” means all structures and buildings existing now or constructed in the future that are owned, leased or used by public educational institutions, which include public colleges, public community colleges, public universities, public school districts, public charter schools, or a school for children in any grade kindergarten through 12 that is operated by the state of Idaho receiving state funding.

**History.**

I.C., § 33-5803, as added by 2016, ch. 192, § 1, p. 534; am. 2017, ch. 58, § 16, p. 91.

**STATUTORY NOTES**

**Amendments.**

The 2017 amendment, by ch. 58, renumbered this section from § 33-5803.

**33-5904. Office of school safety and security.** — (1) There is hereby established in the Idaho division of building safety the office of school safety and security. The administrator of the division of building safety may hire a manager of the office of school safety and security who shall be responsible for the performance of the regular administrative functions of the office and other duties as the administrator may direct. The manager of the office of school safety and security shall be a nonclassified employee. The administrator of the division of building safety may employ persons in addition to the manager in other positions or capacities as he or she deems necessary to fulfill the responsibilities of the office of school safety and security as set forth in this section. The administrator shall provide an office, office equipment and facilities as may be reasonably necessary for the proper performance of the duties of the office manager and other office personnel.

(2) The administrator of the division of building safety and the manager and other personnel of the office of school safety and security may enter all public educational facilities in this state at reasonable times to conduct annual assessments for consistency with the school safety and security guidelines developed by the Idaho school safety and security advisory board. To the extent possible, such assessments should occur simultaneously with inspections conducted pursuant to [section 39-8008, Idaho Code](#). The office of school safety and security shall prepare a written report for each security assessment it conducts. At a minimum, such reports shall include any safety or security vulnerabilities found in the subject school and recommendations for remedying such vulnerabilities. The office shall provide a copy of the report to the local education agency and to the school principal or president. The office shall also prepare an annual report, a copy of which shall be submitted to the state board of education and to the Idaho school safety and security advisory board each year.

(3) Upon request of any public educational institution, the office of school safety and security shall provide training and technical assistance on best practices and resources for school safety and security as set forth in the guidelines established by the Idaho school safety and security advisory board.

(4) The Idaho division of building safety may receive grant moneys on behalf of the office of school safety and security to carry out the responsibilities of the office.

(5) On July 1 of each year, or as soon as practicable, the state controller shall transfer three hundred thousand dollars (\$300,000) from the public school income fund to the division of building safety's miscellaneous revenue fund 0349 for the purposes of this section.

**History.**

I.C., § 33-5804, as added by 2016, ch. 192, § 1, p. 534; am. 2017, ch. 58, § 16, p. 91.

**STATUTORY NOTES**

**Cross References.**

Division of building safety, § 67-2601A.

Idaho school safety and security advisory board, § 33-5905.

Public school income fund, § 33-903.

State board of education, § 33-101.

State controller, § 67-1001 et seq.

**Amendments.**

The 2017 amendment, by ch. 58, renumbered this section from § 33-5804.

**33-5905. Idaho school safety and security advisory board.** — (1) There is hereby established in the Idaho division of building safety the Idaho school safety and security advisory board. The advisory board shall consist of thirteen (13) members as follows:

(a) Four (4) members appointed by the governor as follows: (i) One (1) parent of a student who attends an Idaho public school; (ii) One (1) teacher who teaches in an Idaho public school; (iii) One (1) representative of a local school board; and (iv) One (1) representative of school superintendents;

(b) One (1) representative from the office of the state superintendent of public instruction; (c) One (1) representative from the state board of education; (d) One (1) representative from the Idaho state police; (e) One (1) representative from the Idaho chiefs of police association; (f) One (1) representative from the Idaho sheriffs' association; (g) One (1) representative from the Idaho office of emergency management; (h) One (1) representative from the Idaho fire chiefs association; and (i) Two (2) representatives from the state legislature that shall include one (1) member from the senate appointed by the president pro tempore of the senate and one (1) member from the house of representatives appointed by the speaker of the house of representatives.

(2) The members of the advisory board shall serve the following terms:

(a) The gubernatorial appointees shall serve terms of three (3) years.

(b) All other members shall serve terms of two (2) years.

(3) A vacancy on the advisory board shall be filled in the same manner as the original appointment and for the balance of the unexpired term.

(4) The advisory board shall appoint a chairperson from among its members for a term certain.

(5) The members of the advisory board shall be compensated as provided in [section 59-509\(b\), Idaho Code](#).

(6) The advisory board shall meet at least annually, but may meet more frequently subject to the call of the chairperson.

**History.**

I.C., § 33-5805, as added by 2016, ch. 192, § 1, p. 534; am. 2017, ch. 58, § 16, p. 91.

**STATUTORY NOTES****Cross References.**

Division of building safety, § 67-2601A.

Idaho office of emergency management, § 46-1004.

Idaho state police, § 67-2901 et seq.

State board of education, § 33-101.

State superintendent of public instruction, § 67-1501 et seq.

**Amendments.**

The 2017 amendment, by ch. 58, renumbered this section from § 33-5805 and substituted “Idaho office of emergency management” for “Idaho bureau of homeland security” at the end of paragraph (1)(g).

**Compiler’s Notes.**

For more information on the Idaho chiefs of police association, referred to in paragraph (1)(e), see <http://icopa.org>.

For more information on the Idaho sheriffs association, referred to in paragraph (1)(f), see <https://www.idahosheriffs.org>.

For more information on the Idaho fire chiefs association, referred to in paragraph (1)(h), see <http://idahofirechiefs.org>.

**33-5906. Powers and duties of the Idaho school safety and security advisory board.** — The Idaho school safety and security advisory board shall:

(1) Develop, annually review and modify, if necessary, school safety and security guidelines for the office of school safety and security to use in conducting its annual assessments, training and technical assistance pursuant to [section 33-5904, Idaho Code](#); (2) Regularly assess safety and security resources that may be used in public educational facilities; and (3) On or before February 1 of each year, report to the legislature and to the governor on the status of school safety and security in the Idaho public educational facilities.

**History.**

[I.C., § 33-5806](#), as added by 2016, ch. 192, § 1, p. 534; am. 2017, ch. 58, § 16, p. 91.

**STATUTORY NOTES**

**Cross References.**

Idaho school safety and security advisory board, § 33-5905.

Office of school safety and security, § 33-5904.

**Amendments.**

The 2017 amendment, by ch. 58, renumbered this section from § 33-5806 and substituted “[section 33-5904, Idaho Code](#)” for “[section 33-5804, Idaho Code](#)” at the end of subsection (1).



## **CHAPTER 60**

### **PARENTAL RIGHTS IN EDUCATION**

Section.

33-6001. Parental rights.

33-6002. Annual notice of parental rights.

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### **STATUTORY NOTES**

#### **Compiler's Notes.**

Both S.L. 2016, Chapter 143 and S.L. 2016, Chapter 182 enacted provisions designated as chapter 56, title 33, Idaho Code. The provisions from S.L. 2016, Chapter 182 were retained as enacted. The provisions from S.L. 2016, Chapter 143 were redesignated by the compiler, through the use of brackets, as chapter 60, title 33, Idaho Code. This redesignation was made permanent by S.L. 2017, ch. 58, § 15.

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**33-6001. Parental rights.** — (1) A student's parent or guardian has the right to reasonable academic accommodation from the child's public school. "Reasonable accommodation" means the school shall make its best effort to enable a parent or guardian to exercise their rights without substantial impact to staff and resources, including employee working conditions, safety and supervision on school premises for school activities and the efficient allocation of expenditures, while balancing the parental rights of parents and guardians, the educational needs of other students, the academic and behavioral impacts to a classroom, a teacher's workload and the assurance of the safe and efficient operations of the school.

(2) School districts and the boards of directors of public charter schools, in consultation with parents, teachers and administrators, shall develop and adopt a policy to promote the involvement of parents and guardians of children enrolled in the schools within the school district or the charter school, including:

- (a) A plan for parent participation in the schools that is designed to improve parent and teacher cooperation in such areas as homework, attendance and discipline;
- (b) A process by which parents may learn about the course of study for their children and review learning materials, including the source of any supplemental educational materials; and
- (c) A process by which parents who object to any learning material or activity on the basis that it harms the child or impairs the parents' firmly held beliefs, values or principles may withdraw their child from the activity, class or program in which the material is used.

### **History.**

**I.C., § 33-5601**, as added by 2016, ch. 143, § 1, p. 410; am. 2017, ch. 58, § 15, p. 91.

## **STATUTORY NOTES**

### **Amendments.**

The 2017 amendment, by ch. 58, renumbered this section from § 33-5601 and substituted “accommodation from the child’s public school” for “accommodation from their child’s public school” at the end of the first sentence in subsection (1).

**33-6002. Annual notice of parental rights.** — School districts and the boards of directors of public charter schools shall annually notify a parent or guardian of a student enrolled in the school district or public charter school of the parent's or guardian's rights as specified in this chapter.

**History.**

**I.C., § 33-5602**, as added by 2016, ch. 143, § 1, p. 410; am. 2017, ch. 58, § 15, p. 91.

**STATUTORY NOTES**

**Amendments.**

The 2017 amendment, by ch. 58, renumbered this section from § 33-5602.



## **CHAPTER 61**

# **OPPORTUNITIES FOR COLLEGES AND CAREER READY STUDENTS**

Section.

33-6101. Definitions.

33-6102. Flexible schedule.

33-6103. Flexible schedule — Advanced opportunities funding.

33-6104. Early graduation.

33-6105. Duties of board.

**33-6101. Definitions.** — As used in this chapter:

- (1) “Board” means the state board of education.
- (2) “College and career readiness score” means the minimum score on a college entrance examination indicating that a student is academically ready to advance to an institution of higher education or to an occupation or occupational training, as determined by the board.
- (3) “College entrance examination” means the ACT, the SAT, or a similar examination identified by the board.
- (4) “Participation portfolio” means a description of a student’s nonacademic and cocurricular activities including, but not limited to, student government, sports, music ensembles, theater, clubs, organizations, work, internships, and volunteering. A participation portfolio should also include any leadership positions a student holds in nonacademic activities.

**History.**

I.C., § 33-6101, as added by 2019, ch. 297, § 1, p. 879.

**STATUTORY NOTES**

**Cross References.**

State board of education, § 33-101 et seq.

**33-6102. Flexible schedule.** — (1) A student is eligible to take a flexible schedule as provided in subsection (2) of this section if the student:

- (a) Is at least sixteen (16) years of age;
- (b) Maintains a cumulative 3.5 grade point average; (c) Obtains permission from a parent or guardian, if under the age of eighteen (18) years; (d) Achieves a college and career readiness score; (e) Files with the student's school:
  - (i) Notification of the student's intent to take a flexible schedule; (ii) The student's participation portfolio; and (iii) An essay of at least one (1) page explaining why the student wishes to have a flexible schedule and outlining the student's future plans using such flexible schedule; and (f) Completes:
    - (i) The civics requirement in [section 33-1602, Idaho Code](#); and (ii) The economics credit, government credits, and senior project required under the board's graduation requirements, provided that the student's senior project may describe the student's experience in achieving a college and career readiness score and include a detailed explanation of the student's future plans.

(2) An eligible student may, at the student's option and upon notification to the student's school, be relieved from completing any remaining high school graduation requirements. Such student shall have flexibility in the student's schedule to: (a) Take elective courses, career technical education programs, or core courses as selected by the student and determined to be available by the student's school district or public charter school; (b) Participate in apprenticeships or internships; (c) Act as a tutor at any grade level; or

(d) Engage in such other activities as identified by the board.

(3) A student with a flexible schedule must adhere to the plans described pursuant to subsection (1) (e) of this section. If the student is under the age of eighteen (18) years, the student's plans may be modified with the approval of the student's parent or guardian.

**History.**

**I.C., § 33-6102**, as added by 2019, ch. 297, § 1, p. 879; am. 2020, ch. 26, § 2, p. 59.

**STATUTORY NOTES****Amendments.**

The 2020 amendment, by ch. 26, substituted “requirement in” for “test required by” in paragraph (1)(f)(i).



**33-6103. Flexible schedule — Advanced opportunities funding.** — A student who opts for a flexible schedule pursuant to the provisions of section 33-6102, Idaho Code, may use the student's allotment of advanced opportunities funds for activities identified in subsection (2)(a) of that section.

**History.**

I.C., § 33-6103, as added by 2019, ch. 297, § 1, p. 879.

**33-6104. Early graduation.** — (1) A student is eligible to graduate early as provided in subsection (2) of this section if the student:

- (a) Is at least sixteen (16) years of age;
- (b) Maintains a cumulative 3.5 grade point average; (c) Obtains permission from a parent or guardian, if under the age of eighteen (18) years; (d) Achieves a college and career readiness score; (e) Files with the student's school:
  - (i) Notification of the student's intent to graduate early; (ii) The student's participation portfolio; and (iii) An essay of at least one (1) page explaining why the student wishes to graduate early and outlining the student's future education or training plans if the student graduates early; and (f) Completes:
    - (i) The civics requirement in [section 33-1602, Idaho Code](#); and (ii) The economics credit, government credits, and senior project required under the board's graduation requirements, provided that the student's senior project may describe the student's experience in achieving a college and career readiness score and include a detailed explanation of the student's future plans.

(2) An eligible student may, at the student's option and upon notification to the student's school, be relieved from completing any remaining high school graduation requirements and graduate early.

(3) School districts or public charter schools must grant high school diplomas to students who are eligible and opt for early graduation pursuant to this section.

### **History.**

[I.C., § 33-6104](#), as added by 2019, ch. 297, § 1, p. 879; am. 2020, ch. 26, § 3, p. 59.

## **STATUTORY NOTES**

### **Amendments.**

The 2020 amendment, by ch. 26, substituted “requirement in” for “test required by” in paragraph (1)(f)(i).

**33-6105. Duties of board.** — The board shall:

- (1) Perform duties specifically provided in this chapter;
- (2) Ensure, through rules established by the board, that any funds distributed pursuant to [section 33-6103, Idaho Code](#), are used for the purpose described in that section; and
- (3) Take such actions as are necessary to implement and enforce the provisions of this chapter, including the promulgation of any necessary rules.

**History.**

[I.C., § 33-6105](#), as added by 2019, ch. 297, § 1, p. 879.



## **CHAPTER 62**

### **FAIRNESS IN WOMEN'S SPORTS ACT**

Section.

33-6201. Short title.

33-6202. Legislative findings and purpose.

33-6203. Designation of athletic teams.

33-6204. Protection for educational institutions.

33-6205. Cause of action.

33-6206. Severability.

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### **STATUTORY NOTES**

#### **Compiler's Notes.**

Both S.L. 2020, Chapter 328 and S.L. 2020, Chapter 333, enacted provisions designated as chapter 62 of title 33, Idaho Code. The provisions from S.L. 2020, Chapter 333 were retained as enacted. The provisions from S.L. 2020, Chapter 328 were redesignated by the compiler, through the use of brackets, as chapter 63, title 33, Idaho Code.

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**33-6201. Short title.** — This chapter shall be known and may be cited as the “Fairness in Women’s Sports Act.”

**History.**

I.C., § 33-6201, as added by 2020, ch. 333, § 1, p. 967.

**33-6202. Legislative findings and purpose.** — (1) The legislature finds that there are “inherent differences between men and women,” and that these differences “remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual’s opportunity,” *United States v. Virginia*, 518 U.S. 515, 533 (1996);

(2) These “inherent differences” range from chromosomal and hormonal differences to physiological differences; (3) Men generally have “denser, stronger bones, tendons, and ligaments” and “larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher haemoglobin,” Neel Burton, *The Battle of the Sexes*, Psychology Today (July 2, 2012); (4) Men also have higher natural levels of testosterone, which affects traits such as hemoglobin levels, body fat content, the storage and use of carbohydrates, and the development of type 2 muscle fibers, all of which result in men being able to generate higher speed and power during physical activity, Doriane Lambelet Coleman, *Sex in Sport*, 80 Law and Contemporary Problems 63, 74 (2017) (quoting Gina Kolata, *Men, Women and Speed. 2 Words: Got Testosterone?*, N.Y. Times (Aug. 21, 2008)); (5) The biological differences between females and males, especially as it relates to natural levels of testosterone, “explain the male and female secondary sex characteristics which develop during puberty and have lifelong effects, including those most important for success in sport: categorically different strength, speed, and endurance,” Doriane Lambelet Coleman and Wickliffe Shreve, “*Comparing Athletic Performances: The Best Elite Women to Boys and Men*,” Duke Law Center for Sports Law and Policy; (6) While classifications based on sex are generally disfavored, the Supreme Court has recognized that “sex classifications may be used to compensate women for particular economic disabilities [they have] suffered, to promote equal employment opportunity, [and] to advance full development of the talent and capacities of our Nation’s people,” *United States v. Virginia*, 518 U.S. 515, 533 (1996); (7) One place where sex classifications allow for the “full development of the talent and capacities of our Nation’s people” is in the context of sports and athletics; (8) Courts have recognized that the inherent, physiological differences between males and females result in different athletic capabilities. See *e.g. Kleczek v.*



*Rhode Island Interscholastic League, Inc.*, 612 A.2d 734, 738 (R.I. 1992) (“Because of innate physiological differences, boys and girls are not similarly situated as they enter athletic competition.”); *Petrie v. Ill. High Sch. Ass’n*, 394 N.E.2d 855, 861 (Ill. App. Ct. 1979) (noting that “high school boys [generally possess physiological advantages over] their girl counterparts” and that those advantages give them an unfair lead over girls in some sports like “high school track”); (9) A recent study of female and male Olympic performances since 1983 found that, although athletes from both sexes improved over the time span, the “gender gap” between female and male performances remained stable. “These suggest that women’s performances at the high level will never match those of men.” Valerie Thibault *et al.*, *Women and men in sport performance: The gender gap has not evolved since 1983*, 9 Journal of Sports Science and Medicine 214, 219 (2010); (10) As Duke Law professor and All-American track athlete Doriane Coleman, tennis champion Martina Navratilova, and Olympic track gold medalist Sanya Richards-Ross recently wrote: “The evidence is unequivocal that starting in puberty, in every sport except sailing, shooting, and riding, there will always be significant numbers of boys and men who would beat the best girls and women in head-to-head competition. Claims to the contrary are simply a denial of science,” Doriane Coleman, Martina Navratilova, *et al.*, *Pass the Equality Act, But Don’t Abandon Title IX*, Washington Post (Apr. 29, 2019); (11) The benefits that natural testosterone provides to male athletes is not diminished through the use of puberty blockers and cross-sex hormones. A recent study on the impact of such treatments found that even “after 12 months of hormonal therapy,” a man who identifies as a woman and is taking cross-sex hormones “had an absolute advantage” over female athletes and “will still likely have performance benefits” over women, Tommy Lundberg *et al.*, “*Muscle strength, size and composition following 12 months of gender-affirming treatment in transgender individuals: retained advantage for the transwomen*,” Karolinska Institutet (Sept. 26, 2019); and (12) Having separate sex-specific teams furthers efforts to promote sex equality. Sex-specific teams accomplish this by providing opportunities for female athletes to demonstrate their skill, strength, and athletic abilities while also providing them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that flow from success in athletic endeavors.

**History.**

I.C., § 33-6202, as added by 2020, ch. 333, § 1, p. 967.

**STATUTORY NOTES****Compiler's Notes.**

The dates and text enclosed in parentheses so appeared in the law as enacted

**33-6203. Designation of athletic teams.** — (1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public primary or secondary school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education shall be expressly designated as one (1) of the following based on biological sex:

(a) Males, men, or boys; (b) Females, women, or girls; or (c) Coed or mixed.

(2) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex.

(3) A dispute regarding a student's sex shall be resolved by the school or institution by requesting that the student provide a health examination and consent form or other statement signed by the student's personal health care provider that shall verify the student's biological sex. The health care provider may verify the student's biological sex as part of a routine sports physical examination relying only on one (1) or more of the following: the student's reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels. The state board of education shall promulgate rules for schools and institutions to follow regarding the receipt and timely resolution of such disputes consistent with this subsection.

**History.**

I.C., § 33-6203, as added by 2020, ch. 333, § 1, p. 967.

**33-6204. Protection for educational institutions.** — A government entity, any licensing or accrediting organization, or any athletic association or organization shall not entertain a complaint, open an investigation, or take any other adverse action against a school or an institution of higher education for maintaining separate interscholastic, intercollegiate, intramural, or club athletic teams or sports for students of the female sex.

**History.**

I.C., § 33-6204, as added by 2020, ch. 333, § 1, p. 967.

**33-6205. Cause of action.** — (1) Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this chapter shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school or institution of higher education.

(2) Any student who is subject to retaliation or other adverse action by a school, institution of higher education, or athletic association or organization as a result of reporting a violation of this chapter to an employee or representative of the school, institution, or athletic association or organization, or to any state or federal agency with oversight of schools or institutions of higher education in the state, shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school, institution, or athletic association or organization.

(3) Any school or institution of higher education that suffers any direct or indirect harm as a result of a violation of this chapter shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the government entity, licensing or accrediting organization, or athletic association or organization.

(4) All civil actions must be initiated within two (2) years after the harm occurred. Persons or organizations who prevail on a claim brought pursuant to this section shall be entitled to monetary damages, including for any psychological, emotional, and physical harm suffered, reasonable attorney's fees and costs, and any other appropriate relief.

**History.**

I.C., § 33-6205, as added by 2020, ch. 333, § 1, p. 967.

**33-6206. Severability.** — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

**History.**

I.C., § 33-6206, as added by 2020, ch. 333, § 1, p. 967.



## **CHAPTER [33-63] 62**

### **EXTENDED EMPLOYMENT SERVICES PROGRAM**

Section.

[33-6301]. Definitions.

[33-6302]. Program established.

[33-6303]. Eligibility.

[33-6304]. Covered services — Individual program plan.

[33-6305]. EES providers — Requirements — Revocation of approval — Agreement review.

[33-6306]. Program implementation.

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### **STATUTORY NOTES**

#### **Compiler's Notes.**

Both S.L. 2020, Chapter 328 and S.L. 2020, Chapter 333, enacted provisions designated as chapter 62 of title 33, Idaho Code. The provisions from S.L. 2020, Chapter 333 were retained as enacted. The provisions from S.L. 2020, Chapter 328 were redesignated by the compiler, through the use of brackets, as chapter 63, title 33, Idaho Code.

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**[33-6301] 33-6201. Definitions.** — As used in this chapter:

- (1) “Board” means the state board of education.
- (2) “Disability” means a developmental disability as defined in [45 CFR 1325.3](#) or a learning disability, mental illness, or traumatic brain injury as defined in board rule.
- (3) “Division” means the division of vocational rehabilitation.
- (4) “Extended employment services” or “EES” means long-term maintenance services that assist participants in maintaining employment or gaining employment skills in preparation for community employment or that provide assistance to adult participants within an industry or a business setting or a community rehabilitation program intended to maintain paid employment. Extended employment services include individual supported employment, group community-based supported employment, and work services.
- (5) “Group community-based supported employment” means self-employment or paid employment that is:
  - (a) For a group of no more than eight (8) participants who are paid at least minimum wage and who, because of their disabilities, need ongoing support to maintain employment;
  - (b) Conducted in a variety of community and industry settings where the participants have opportunities to interact with coworkers or others without known paid work supports at least to the extent that those opportunities typically exist in that work setting;
  - (c) Supported by training and supervision needed to maintain that employment; and
  - (d) Not conducted in the work services area of a provider.
- (6) “Individual community-supported employment” means self-employment or paid employment:
  - (a) For which a participant is paid a competitive wage;

(b) For which the participant, because of the participant's disability, needs ongoing support to maintain the employment;

(c) That is conducted in a community or industry setting where persons without known paid work supports are employed; and

(d) Is supported by authorized activities needed to sustain paid work by persons with disabilities, including but not limited to supervision, training, and transportation.

(7) "Individual program plan" means a plan for extended employment services appropriate for an individual participant based on the participant's needs and personal goals.

(8) "Participant" means a person eligible for and enrolled in the extended employment services program established pursuant to [section 33-6202 \[33-6302\]](#), [Idaho Code](#).

(9) "Program" means the extended employment services program established pursuant to [section 33-6202 \[33-6302\]](#), [Idaho Code](#).

(10) "Provider" means a community rehabilitation program services provider approved by the division to provide extended employment services.

(11) "Work services" means activities, typically conducted on provider premises, intended to assist participants in understanding the value and demands of work and developing functional capacities that increase or maintain the skill sets of participants to achieve and maintain employment.

### **History.**

[I.C., § 33-6201](#), as added by 2020, ch. 328, § 1, p. 946.

## **STATUTORY NOTES**

### **Cross References.**

State board of education, § 33-101.

### **Compiler's Notes.**

For additional information on the division of vocational rehabilitation, referred to in subsection (3), see <https://vr.idaho.gov>.

The bracketed insertions in subsections (8) and (9) were added by the compiler to account for the renumbering of this section, caused by the multiple enactment of chapter 62, title 33, Idaho Code, in 2020.

**[33-6302] 33-6202. Program established.** — (1) There is hereby established in the board an extended employment services (EES) program for the purpose of increasing employment opportunities for program participants. The program shall be administered by the division. Extended employment services offered under the program are separate and apart from any federal program but may be collaborative with and supportive of federal programs. Administrative costs charged to the EES program shall be limited, subject to federal indirect cost rate matching requirements, and subject to audit and review.

(2) Program services shall be: (a) Provided when eligible individuals do not have access to comparable services or have fully utilized comparable services for which they are eligible; and (b) Separate and apart from and delivered subsequent to vocational rehabilitation services as defined in **29 U.S.C. 705(40)**, provided by the division.

#### **History.**

**I.C., § 33-6202**, as added by 2020, ch. 328, § 1, p. 946.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

The abbreviation enclosed in parentheses so appeared in the law as enacted.

**[33-6303] 33-6203. Eligibility.** — (1) A person is eligible to participate in the program if the person:

(a) Has a disability that constitutes a barrier to maintaining paid employment without long-term vocational support; (b) Is sixteen (16) years of age or older; and (c) Is an Idaho resident.

(2) The division may periodically review a participant's eligibility and service level need for the program.

**History.**

I.C., § 33-6203, as added by 2020, ch. 328, § 1, p. 946.

**[33-6304] 33-6204. Covered services — Individual program plan. —**

(1) Subject to available funding, the program shall provide the following services to participants, as appropriate:

(a) Individual community-supported employment; (b) Group community-based supported employment; and (c) Work services.

(2) The services provided to a participant shall be based on the participant's individual program plan, as developed according to board rule.

**History.**

I.C., § 33-6204, as added by 2020, ch. 328, § 1, p. 946.

**[33-6305] 33-6205. EES providers — Requirements — Revocation of approval — Agreement review.** — (1) The division shall approve any person or entity before such person or entity may provide extended employment services under the program. The division shall enter an agreement with each program provider. The agreement shall specify:

- (a) Requirements for the provider; (b) Services to be offered by the provider; (c) Scope of work under the agreement; (d) Service fees; and
- (e) Other terms, conditions, and provisions as determined by the division and agreed to by the provider.

(2) The division may terminate or revoke the approval status and discontinue authorizing or purchasing services from providers for actions in violation of the agreement or rules promulgated by the board.

(3) A provider agreement shall be reviewed annually and is subject to revision as required by the division in cooperation with providers.

**History.**

I.C., § 33-6205, as added by 2020, ch. 328, § 1, p. 946.

• Title 33», « Ch.[33-63] 62. •, « [33-6306] 33-6206. •

Idaho Code [33-6306] 33-6206

**[33-6306] 33-6206. Program implementation.** — The board is hereby authorized to take such actions as are necessary to implement the provisions of this chapter, including promulgation of necessary rules.

**History.**

I.C., § 33-6206, as added by 2020, ch. 328, § 1, p. 946.



# **TITLE 34 ELECTIONS**

## Chapter.

1. Definitions, §§ 34-101 — 34-117.
2. Duties of Officers, §§ 34-201 — 34-217.
3. Election Precincts and Judges, §§ 34-301 — 34-308.
4. Voters — Privileges, Qualifications and Registration, §§ 34-401 — 34-439A.
5. Political Parties — Organization, §§ 34-501 — 34-507.
6. Time of Elections — Officers Elected, §§ 34-601 — 34-627A.
7. Nominations — Conventions — Primary Elections, §§ 34-701 — 34-740.
8. Registration of Electors. [Repealed.]
9. Ballots, §§ 34-901 — 34-913.
10. Absentee Voting, §§ 34-1001 — 34-1014.
11. Conduct of Elections, §§ 34-1101 — 34-1115.
12. Canvass of Votes, §§ 34-1201 — 34-1217.
13. State Board of Canvassers. [Repealed.]
14. Uniform District Election Law, §§ 34-1401 — 34-1413.
15. Presidential Electors, §§ 34-1501 — 34-1507.
16. Special Elections. [Repealed.]
17. Recall Elections, §§ 34-1701 — 34-1716.
18. Initiative and Referendum Elections, §§ 34-1801 — 34-1823.
19. Congressional Districts, §§ 34-1901 — 34-1904.
20. Election Contests Other Than Legislative and State Executive Offices, §§ 34-2001 — 34-2036.
21. Election Contests Act, §§ 34-2101 — 34-2128.
22. Constitutional Convention Act, §§ 34-2201 — 34-2217.
23. Recount of Ballots, §§ 34-2301 — 34-2313.
24. Voting by Machine or Vote Tally System, §§ 34-2401 — 34-2430.
25. Election Campaign Fund. [Repealed.]



## **CHAPTER 1**

### **DEFINITIONS**

#### **Section.**

- 34-101. “General election” defined — Offices to be filled — Constitutional amendments.
- 34-102. “Primary election” defined — Purposes.
- 34-103. “Special election” defined.
- 34-104. “Qualified elector” defined.
- 34-105. “Registered elector” defined.
- 34-106. Limitation upon elections.
- 34-106A. “Special presidential and congressional elector” defined.  
[Repealed.]
- 34-107. “Residence” defined.
- 34-108. “Election official” defined.
- 34-109. “Political party” defined.
- 34-110. “Election register” defined.
- 34-111. “Combination election record and poll book” defined — Operation.
- 34-111A. “Electronic poll book” defined.
- 34-112. “County clerk” defined.
- 34-113. “Candidate” defined.
- 34-114. “Tally book” or “tally list” defined.
- 34-115. References to male include female and masculine includes feminine.
- 34-116. Calendar days used in computation of time.
- 34-117. “Judicial nominating election” defined.

**34-101. “General election” defined — Offices to be filled — Constitutional amendments.** — “General election” means the national, state and county election held on the first Tuesday succeeding the first Monday of November in each even-numbered year.

At these elections there shall be chosen all congressional, state and county officers, including electors of president and vice-president of the United States, as are by law to be elected in such years.

All amendments to the Idaho constitution shall be submitted to the voters for their approval at these elections.

**History.**

1970, ch. 140, § 1, p. 351; am. 1971, ch. 194, § 1, p. 881.

**STATUTORY NOTES**

**Cross References.**

Campaign contributions, expenditures and lobbyist registration, § 67-6601 et seq.

**Prior Laws.**

Former §§ 34-101 to 34-105, which comprised 1890-1891, p. 57, §§ 1, 5 (in part), and 160; reen. 1899, p. 33, §§ 1, 5 (in part), and 156; am. R.C., §§ 344 to 346; C.L., §§ 344 to 346; C.S., §§ 488 to 490; I.C.A., §§ 33-101 to 33-103; 1953, ch. 158, §§ 1, 2, p. 252; am. 1961, ch. 19, § 1, p. 21, were repealed by S.L. 1970, ch. 140, § 202.

**JUDICIAL DECISIONS**

**Cited in:** [Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 \(1975\).](#)

Decisions Under Prior Law General Election.

“General election” is the election at which all state officers are elected; whether election is general or special is determined, not by date on which it

is held or authority which designates such date, but by character of election. **Doan v. Board of County Comm'rs, 3 Idaho 38, 26 P. 167 (1891).**

Words “general election,” as generally used in constitutions and statutes, have reference to general elections held for the purpose of electing state and county officers. **Kessler v. Fritchman, 21 Idaho 30, 119 P. 692 (1911).**

**34-102. “Primary election” defined — Purposes.** — (1) “Primary election” means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties. Primary elections, with the exception of presidential primaries, shall be held on the third Tuesday of May in each even-numbered year.

(2) “Presidential primary” means an election held for the purpose of allowing voters to express their choice of candidate for nomination by a political party for president of the United States. A presidential primary shall be held on the second Tuesday in March in each presidential election year.

**History.**

1970, ch. 140, § 2, p. 351; am. 1971, ch. 194, § 2, p. 881; am. 1975, ch. 174, § 11, p. 469; am. 1979, ch. 309, § 1, p. 833; am. 2011, ch. 11, § 10, p. 24; am. 2012, ch. 33, § 1, p. 103; am. 2015, ch. 292, § 1, p. 1166.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-102 was repealed. See Prior Laws, § 34-101.

**Amendments.**

The 2011 amendment, by ch. 11, substituted “third Tuesday of May” for “fourth Tuesday of May” in both paragraphs.

The 2012 amendment, by ch. 33, deleted the former second paragraph, which read: “‘Presidential primary’ or ‘presidential preference primary’ means an election held for the purpose of allowing voters to express their choice for candidates for nominations for president of the United States. Presidential primary elections shall be held in conjunction with the primary election, on the third Tuesday of May in each presidential election year.”

The 2015 amendment, by ch. 292, designated the existing provisions of the section as subsection (1), added subsection (2), and inserted “with the

exception of presidential primaries” near the end of subsection (1).

**Effective Dates.**

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

Section 15 of S.L. 2012, ch. 33 declared an emergency. Approved March 1, 2012.

**JUDICIAL DECISIONS**

**Cited in:** Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

**34-103. “Special election” defined.** — “Special election” means any election other than a general or primary election held at any time for any purpose provided by law.

**History.**

1970, ch. 140, § 3, p. 351; am. 1971, ch. 194, § 3, p. 881.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-103 was repealed. See Prior Laws, § 34-101.



**34-104. “Qualified elector” defined.** — “Qualified elector” means any person who is eighteen (18) years of age, is a United States citizen and who has resided in this state and in the county at least thirty (30) days next preceding the election at which he desires to vote, and who is registered as required by law.

**History.**

1970, ch. 140, § 4, p. 351; am. 1971, ch. 194, § 4, p. 881; am. 1972, ch. 350, § 1, p. 1036; am. 1973, ch. 304, § 1, p. 646; am. 1982, ch. 253, § 1, p. 645.

**STATUTORY NOTES**

**Cross References.**

Qualifications of electors, § 34-402.

Registration of electors, § 34-404.

**Prior Laws.**

Former § 34-104 was repealed. See Prior Laws, § 34-101.

**OPINIONS OF ATTORNEY GENERAL**

**Residency.**

Individuals who have been committed as involuntary patients in a mental illness facility located in a county other than their county of residence before the commitment do not become eligible to register to vote in the county of their commitment solely on the basis of being in that county during their term of commitment. OAG 2014-1.

**34-105. “Registered elector” defined.** — “Registered elector”, for the purpose of this act, means any “qualified elector”.

**History.**

1970, ch. 140, § 5, p. 351; am. 1971, ch. 194, § 5, p. 881.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-105 was repealed. See Prior Laws, § 34-101.

**Compiler’s Notes.**

The term “this act” refers to S.L. 1971, Chapter 194, which is presently codified as §§ 34-101 to 34-105, 34-107, 34-108, and 34-117. The reference probably should be to “this title,” being title 34, Idaho Code.

**34-106. Limitation upon elections.** — On and after January 1, 2011, notwithstanding any other provisions of the law to the contrary, there shall be no more than two (2) elections conducted in any county in any calendar year, except as provided in this section, and except that elections to fill vacancies in the United States house of representatives shall be held as provided in the governor's proclamation.

(1) The dates on which elections may be conducted are:

(a) The third Tuesday in May of each year; and

(b) The Tuesday following the first Monday in November of each year.

(c) In addition to the elections specified in paragraphs (a) and (b) of this subsection and subsection (7) of this section, an emergency election may be called upon motion of the governing board of a political subdivision. An emergency exists when there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for a national or local defense, or it is necessary to do emergency work to safeguard life, health or property.

(d) In addition to the elections specified elsewhere in this section, a presidential primary shall be held on the second Tuesday in March in each presidential election year. Presidential primaries shall be held separately from other primary elections, which shall be held on the third Tuesday in May even in presidential election years.

(2) Candidates for office elected in May shall take office on the date specified in the certificate of election but not more than sixty (60) days following the election.

(3) Candidates for office elected in November shall take office as provided in the constitution, or on January 1, next succeeding the November election.

(4) The governing board of each political subdivision subject to the provisions of this section, which, prior to January 1, 2011, conducted an election for members of that governing board on a date other than a date

permitted in subsection (1) of this section, shall establish as the election date for that political subdivision the date authorized in subsection (1) of this section which falls nearest the date on which elections were previously conducted, unless another date is established by law.

(5) The secretary of state is authorized to provide such assistance as necessary, and to prescribe any needed rules or interpretations for the conduct of election authorized under the provisions of this section.

(6) Water districts governed by chapter 6, title 42, Idaho Code, are exempt from the provisions of this section.

(7) Community colleges governed by chapter 21, title 33, Idaho Code, and school districts are subject to the limitations specified in subsection (1) of this section, except that school districts may also hold an election on the second Tuesday in March of each year and on the last Tuesday in August of each year on bonded indebtedness and property tax levy questions.

(8) A city initiative or referendum election shall be held on the Tuesday following the first Monday in November of odd-numbered years. A county initiative or referendum election or a bond, levy and any other ballot question elections conducted by any political subdivision shall be held on the nearest date authorized in subsection (1) of this section which falls more than sixty (60) days after the clerk of the political subdivision orders that such election shall be held in May or November of even-numbered years or more than fifty (50) days after the order for all other elections, unless otherwise provided by law. Ballot language for any question to be placed on the ballot shall be submitted to the county clerk at least sixty (60) days before an election held in May or November of even-numbered years and at least fifty (50) days before all other elections.

(9) Recall elections may be held on any of the four (4) dates authorized in subsections (1) and (7) of this section that fall more than forty-five (45) days after the clerk of the political subdivision orders that such election shall be held.

(10) Irrigation districts governed by title 43, Idaho Code, are subject to the limitations specified in subsection (1) of this section, except that irrigation districts may also hold an election on the first Tuesday in

February of each year and on the first Tuesday in August of each year on questions required to be voted upon by title 43, Idaho Code.

### **History.**

**I.C., § 34-106**, as added by 1992, ch. 176, § 2, p. 553; am. 1993, ch. 313, § 3, p. 1157; am. 2007, ch. 92, § 2, p. 271; am. 2009, ch. 341, § 55, p. 993; am. 2010, ch. 185, § 6, p. 382; am. 2011, ch. 11, § 11, p. 24; am. 2013, ch. 135, § 3, p. 307; am. 2015, ch. 285, § 1, p. 1155; am. 2015, ch. 292, § 2, p. 1166; am. 2018, ch. 238, § 1, p. 557.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-106, which comprised 1970, ch. 140, § 6, p. 351, was repealed by S.L. 1973, ch. 123, § 1, p. 233.

Another former § 34-106, which comprised S.L. 1959, ch. 145, § 1, was repealed by S.L. 1961, ch. 22, § 1.

### **Amendments.**

The 2007 amendment, by ch. 92, inserted “but not including community colleges governed by chapter 21, title 33, Idaho Code” in subsection (6).

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 185, in subsection (8), deleted “except school districts” following “any political subdivision” and inserted the reference to subsection (7).

The 2011 amendment, by ch. 11, in paragraph (1)(c) inserted “and subsection (7) of this section” in the first sentence and deleted the former last sentence, which read: “Such a special election, if conducted by the county clerk, shall be conducted at the expense of the political subdivision submitting the question”; in subsection (8), deleted “recall” following “referendum” near the beginning and substituted “subsection (1) of this section” for “subsections (1) and (7) of this section” near the middle; and

rewrote subsection (9), which formerly read: “Recall elections may be held on a different date as authorized in subsections (1) and (7), and on the second Tuesday of March and the last Tuesday of August, as determined by the county clerk after receipt of necessary petitions.”

The 2013 amendment, by ch. 135, in subsection (8), substituted “sixty (60) days” for “forty-five (45) days” and inserted “in May and November of even-numbered years and fifty (50) days for all other elections” in the first sentence and added the last sentence.

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 285, added the second sentence in subsection (8).

The 2015 amendment, by ch. 292, added paragraph (1)(d).

The 2018 amendment, by ch. 238, in subsection (8), added the first sentence, substituted “A county initiative or referendum election or a bond” for “Initiative, referendum, bond” at the beginning of the second sentence, and substituted “or November of even-numbered years or more than fifty (50) days after the order” for “and November of even-numbered years and fifty (50) days” near the end, deleted the former second sentence, which read: “City initiative and referendum elections shall be held in November of odd-numbered years as provided by [section 34-1801B, Idaho Code](#)”, and, in the last sentence, substituted “and election held in May or November” for “the election held in May and November” and “before all other elections” for “for all other elections”.

### **Legislative Intent.**

Section 1 of S.L. 1992, ch. 176 read: “It is the finding of the legislature that the process of exercising the elective franchise should be made as accessible as possible for as many citizens as possible. The provisions of this bill will achieve a significant consolidation of elections on four (4) election dates in each year. In addition, this election code, which applies to the various political subdivisions of the state of Idaho, will assure access to the nominating process, registration of potential electors, absentee voting opportunity and an increased visibility of the electoral process to assure public access and increased participation. At a future date, it may be

warranted to further consolidate elections as events demonstrate that need. The goal of providing increased visibility for the electoral process will be well served by this consolidation of elections, by the increased public notice of filing and election deadlines, and the public education which will accompany the implementation of this act.”

### **Compiler’s Notes.**

Section 3 of S.L. 2007, ch. 92 provides: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 7 of S.L. 1992, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1994, except that the provisions of Section 6 [appropriation] of this act shall be in full force and effect on and after July 1, 1992.”

Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

Section 4 of S.L. 2007, ch. 92 declared an emergency. Approved March 20, 2007.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

## **JUDICIAL DECISIONS**

**Cited in:** *Shoshone-Bannock Tribes v. Fish & Game Comm’n*, 42 F.3d 1278 (9th Cir. 1994).

Idaho Code 34-106A

**34-106A. “Special presidential and congressional elector” defined.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler’s Notes.**

This section, which comprised I.C., § 34-106A, as added by 1971, ch. 194, § 6, was repealed by S.L. 1972, ch. 350, § 2.



**34-107. “Residence” defined.** — (1) “Residence,” for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.

(2) In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, situs of residence for which the exemption in [section 63-602G, Idaho Code](#), is filed, and motor vehicle registration.

(3) A qualified elector who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.

(4) A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(5) If a qualified elector moves to another state, or to any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state.

### **History.**

1970, ch. 140, § 7, p. 351; am. 1971, ch. 194, § 7, p. 881; am. 1982, ch. 215, § 1, p. 589; am. 1989, ch. 147, § 1, p. 354; am. 1996, ch. 322, § 34, p. 1029.

## **STATUTORY NOTES**

### **Prior Laws.**

Former §§ 34-107 to 34-111, which comprised S.L. 1959, ch. 145, §§ 2 to 6, were repealed by S.L. 1961, ch. 22, § 1.

**Effective Dates.**

Section 73 of S.L. 1996, ch. 322 provided that the act would be in full force and effect January 1, 1997.

**JUDICIAL DECISIONS**

**Cited in:** [Bradbury v. Idaho Judicial Council, 149 Idaho 107, 233 P.3d 38 \(2009\).](#)

**OPINIONS OF ATTORNEY GENERAL**

**Treatment Facility.**

Individuals who have been committed as involuntary patients in a mental illness facility located in a county other than their county of residence before the commitment do not become eligible to register to vote in the county of their commitment solely on the basis of being in that county during their term of commitment. OAG 2014-1.

**34-108. “Election official” defined.** — “Election official” means the secretary of state, any county clerk, registrar, judge of election, clerk of election, canvassing board or board of county commissioners engaged in the performance of election duties as required by law.

**History.**

1970, ch. 140, § 8, p. 351; am. 1971, ch. 194, § 8, p. 881.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-108 was repealed. See Prior Laws, § 34-107.

**34-109. “Political party” defined.** — “Political party” means an affiliation of electors representing a political group under a given name as authorized by law.

**History.**

1970, ch. 140, § 9, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-109 was repealed. See Prior Laws, § 34-107.

**JUDICIAL DECISIONS**

**Cited in:** Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975); Troutner v. Kempthorne, 142 Idaho 389, 128 P.3d 926 (2006).

**34-110. “Election register” defined.** — “Election register” means the voter registration cards of all electors who are qualified to appear and vote at the designated polling places.

**History.**

1970, ch. 140, § 10, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-110 was repealed. See Prior Laws, § 34-107.

**34-111. “Combination election record and poll book” defined — Operation.** — (1) “Combination election record and poll book” means the book containing a listing of registered electors who are qualified to appear and vote at the designated polling places. An additional copy of the combination election record and poll book may be maintained to record that the elector has voted.

(2) The county clerk shall deliver to the chief election judge in each precinct, as other election supplies and materials are delivered, a list in alphabetical order of all registered electors referred to in [section 34-110, Idaho Code](#). This list shall constitute the combination election record and poll book of each precinct. This list shall include the residence address of each elector. For any given precinct, the list may be divided into two (2) or more separate parts and shall be alphabetical according to the name of the registered elector.

(3) The county clerk shall administer an oath of office to the chief judge of each precinct, before or upon delivering supplies. The county clerk may delegate his authority to administer oath of the chief judge to any officer authorized to administer oaths, including notaries public.

(4) Before entering upon the discharge of their duties, the election judges shall take and subscribe an oath in the combination election record and poll book. Such oaths shall be administered by the chief judge of the precinct. Should the chief judge fail to be present any officer authorized to administer oaths including notaries public may administer oaths to the election judges. Blank oaths of office shall be attached to the combination election record and poll book.

(5) The combination election record and poll book shall be in the manner and form prescribed by the secretary of state.

(6) Immediately after the close of the polls, the names of the electors who voted shall be counted and the number written and certified in the combination election record and poll book. The combination election record and poll book shall be immediately signed by each of the election board judges.

**History.**

1970, ch. 140, § 11, p. 351; am. 1972, ch. 350, § 3, p. 1036; am. 1982, ch. 137, § 1, p. 388.

**STATUTORY NOTES****Prior Laws.**

Former § 34-111 was repealed. See Prior Laws, § 34-107.

**Effective Dates.**

Section 4 of S.L. 1972, ch. 350 declared an emergency. Approved March 31, 1972.

Section 7 of S.L. 1982, ch. 137 declared an emergency. Approved March 22, 1982.

**34-111A. “Electronic poll book” defined.** — “Electronic poll book” means an electronic list of registered voters for a particular precinct or polling location that may be transported to the polling location. The electronic poll book shall contain the same information as the combination election record and poll book as defined in this chapter.

**History.**

I.C., § 34-111A, as added by 2015, ch. 282, § 1, p. 1147.

**STATUTORY NOTES**

**Effective Dates.**

Section 9 of S.L. 2015, ch. 282 declared an emergency. Approved April 6, 2015.



Idaho Code 34-112

**34-112. “County clerk” defined.** — “County clerk” means the clerk of the district court.

**History.**

1970, ch. 140, § 12, p. 351.

**34-113. “Candidate” defined.** — “Candidate” means and includes every person for whom it is contemplated or desired that votes be cast at any political convention, primary, general or special election, and who either tacitly or expressly consents to be so considered, except candidates for president and vice-president of the United States.

**History.**

1970, ch. 140, § 13, p. 351.

Idaho Code 34-114

**34-114. “Tally book” or “tally list” defined.** — “Tally book” or “tally list” means the forms in which the votes cast for any candidate or special question are counted and totaled at the polling precinct.

**History.**

1970, ch. 140, § 14, p. 351.

**34-115. References to male include female and masculine includes feminine.** — All references to the male elector includes [include] the female elector and the masculine pronoun includes the feminine.

**History.**

1970, ch. 140, § 15, p. 351.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed word “include” was inserted by the compiler to correct the syntax of the sentence.

**34-116. Calendar days used in computation of time.** — Calendar days shall be used in all computations of time made under the provisions of this act. In computing time for any act to be done before any election, the first day shall be included and the last, or election day, shall be excluded. Sundays, Saturdays and legal holidays shall be included, but if the time for any act to be done shall fall on Sunday, Saturday or a legal holiday, such act shall be done upon the day following such Sunday, Saturday or legal holiday.

**History.**

1970, ch. 140, § 16, p. 351; am. 1995, ch. 215, § 1, p. 747.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” refers to S.L. 1970, Chapter 140, which is compiled throughout Title 34 of the Idaho Code. The reference probably should be to “this title,” being title 34, Idaho Code.

**Effective Dates.**

Section 16 of S.L. 1995, ch. 215 declared an emergency. Approved March 17, 1995.

**JUDICIAL DECISIONS**

**Cited in:** Herrmann v. State (In re Herrmann), 162 Idaho 682, 403 P.3d 318 (Ct. App. 2017).

**34-117. “Judicial nominating election” defined.** — “Judicial nominating election” means an election held for the purpose of selecting justices of the supreme court and judges of the district court as are by law to be selected at such election. This election shall be held on the date of the statewide primary election.

**History.**

I.C., § 34-117, as added by 1971, ch. 194, § 9, p. 881.



## **CHAPTER 2**

### **DUTIES OF OFFICERS**

#### **Section.**

- 34-201. Secretary of state chief election officer.
- 34-202. Secretary of state to distribute comprehensive directives and instructions relating to election laws to all county clerks.
- 34-203. Assistance and advice to county clerks.
- 34-204. Conferences with county clerks on administration of election laws.
- 34-205. Duties of secretary of state relating to election laws.
- 34-206. General supervision of administration of election laws by county clerks.
- 34-207. Directives of county clerks. [Repealed.]
- 34-208. Duties of county clerks relating to supervision of election laws.
- 34-209. Powers of county clerks.
- 34-210. Preparation of ballots, papers, documents, records, and other materials and supplies required.
- 34-211. Office of county clerk open as long as polls are open.
- 34-212. Reports to prosecuting attorney of noncompliance with election laws by county clerk.
- 34-213. Mandamus to enforce compliance by county clerk.
- 34-214. Noncompliance by local county election officials — Enforcement by county clerk.
- 34-215. Appeals by aggrieved persons.
- 34-216. Grievance procedures.
- 34-217. Retention of county election records.



**34-201. Secretary of state chief election officer.** — The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws.

The secretary of state is responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed service voters and overseas voters with respect to elections for federal office as required by section 102 of the uniformed and overseas citizens absentee voting act (42 U.S.C. section 1973 et seq.).

If a national or local emergency or other situation arises which makes substantial compliance with the provisions of the uniformed and overseas citizens absentee voting act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States armed forces, mobilization of those forces, including state national guard and reserve components of this state, the secretary of state may prescribe, by directive, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in this state.

### **History.**

1970, ch. 140, § 17, p. 351; am. 2003, ch. 48, § 1, p. 181.

## **STATUTORY NOTES**

### **Cross References.**

Penalty for official neglect or malfeasance, § 18-2301.

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former §§ 34-201 to 34-207, which comprised 1890-1891, p. 57, §§ 6 to 11; reen. 1899, p. 33, §§ 6 to 11; reen. R.C., §§ 347 to 352; 1913, ch. 114, p. 433; C. L., §§ 347 to 352; C. S., §§ 491 to 497; 1921, ch. 216, § 1, p. 473; I.C.A., §§ 33-201 to 33-207; 1945, ch. 135, §§ 1, 2, p. 204; 1959, ch. 221, §

9, p. 484; am. 1961, ch. 9, § 1, p. 11; am. 1963, ch. 83, § 1, p. 277; am. 1965, ch. 115, § 1, p. 223; am. 1965, ch. 315, §§ 1, 2, p. 878; am. 1969, ch. 115, §§ 1, 2, p. 373, were repealed by S.L. 1970, ch. 140, § 203.

### **Federal References.**

Section 102 of the uniformed and overseas citizens absentee voting act, referred to in the second paragraph, is presently codified as [52 U.S.C.S. § 20302](#).

The uniformed and overseas citizens absentee voting act, referred to in the second paragraph, is codified as [50 USCS § 20301 et seq.](#)

### **Effective Dates.**

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

## **JUDICIAL DECISIONS**

**Cited in:** [Cenarrusa v. Peterson, 95 Idaho 395, 509 P.2d 1316 \(1973\).](#)

**34-202. Secretary of state to distribute comprehensive directives and instructions relating to election laws to all county clerks.** — In carrying out his responsibility under section 17 [34-201, Idaho Code], the secretary of state shall cause to be prepared and distributed to each county clerk detailed and comprehensive written directives and instructions relating to and based upon the election laws as they apply to elections, registration of electors and voting procedures which by law are under the direction and control of the county clerk. Such directives and instructions shall include sample forms of ballots, papers, documents, records and other materials and supplies required by such election laws. The secretary of state shall prescribe a form for voter registration cards based on the voter registration laws and, from time to time, shall cause to be prepared and distributed to each county clerk such written corrections of such directives and instructions and of the form for registration cards as are necessary to maintain uniformity in the application, operation and interpretation of and to reflect changes in the election laws. Each county clerk affected thereby shall comply with such directives and instruction, and corrections thereof, and shall provide voter registration cards prepared in accordance with the prescribed form.

**History.**

1970, ch. 140, § 18, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-202 was repealed. See Prior Laws, § 34-201.

**Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to explain the reference in the enacted text.

## **JUDICIAL DECISIONS**

**Cited in:** [Cenarrusa v. Peterson, 95 Idaho 395, 509 P.2d 1316 \(1973\).](#)

**34-203. Assistance and advice to county clerks.** — In carrying out his responsibility under section 17 [34-201, Idaho Code], the secretary of state shall assist and advise each county clerk with regard to the application, operation and interpretation of the election laws as they apply to elections, registration of electors and voting procedures which by laws are under the direction and control of the county clerk.

**History.**

1970, ch. 140, § 19, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-203 was repealed. See Prior Laws, § 34-201.

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to explain the reference in the enacted text.

**RESEARCH REFERENCES**

**Idaho Law Review.** — Idaho's Messy History with Term Limits: A Modest Response, Bart M. Davis. 52 Idaho L. Rev. 463 (2016).

**34-204. Conferences with county clerks on administration of election laws.** — In carrying out his responsibility under section 34-201, Idaho Code, the secretary of state shall cause to be organized and conducted at convenient places and times in this state at least three (3) conferences on the administration of the election laws. The secretary of state shall cause written notice of the place and time of each conference to be given to each county clerk. Each county clerk or his designated deputy shall attend at least one (1) of the conferences and shall comply with the instructions given under the authority of the secretary of state at each conference such county clerk attends.

**History.**

1970, ch. 140, § 20, p. 351; am. 2015, ch. 292, § 3, p. 1166.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-204 was repealed. See Prior Laws, § 34-201.

**Amendments.**

The 2015 amendment, by ch. 292, substituted “**section 34-201, Idaho Code**” for “section 17” near the beginning of the first sentence.

**34-205. Duties of secretary of state relating to election laws.** — The secretary of state shall:

(1) Prepare and cause to be printed, in appropriate and convenient form, periodic compilations and digests of the election laws.

(2) Distribute in appropriate quantities to the county clerks for use by such county clerks and by election boards, copies of such compilations and digests and the sample form of such supplies and materials necessary to conduct elections as the secretary of state considers appropriate, including poll books, tally sheets, return sheets and abstract of vote sheets.

(3) Make such compilations and digests available for distribution, free or at cost, to interested persons.

**History.**

1970, ch. 140, § 21, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-205 was repealed. See Prior Laws, § 34-201.

**34-206. General supervision of administration of election laws by county clerks.** — Subject to and in accordance with the directives and instructions prepared and distributed or given under the authority of the secretary of state, each county clerk shall exercise general supervision of the administration of the election laws by each local election official in his county for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity in such administration by local election officials. Such directives and instructions shall be directed to and shall be complied with by each local election official affected thereby.

**History.**

1970, ch. 140, § 22, p. 351; am. 1971, ch. 69, § 1, p. 155.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-206 was repealed. See Prior Laws, § 34-201.

**JUDICIAL DECISIONS**

**Cited in:** *Cenarrusa v. Peterson*, 95 Idaho 395, 509 P.2d 1316 (1973).



**34-207. Directives of county clerks. [Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

A former § 34-207 was repealed by S.L. 1970, ch. 140, § 203. See Prior Laws, § 34-201.

**Compiler's Notes.**

This section, which comprised § 23, S.L. 1970, ch. 140, was repealed by S.L. 1971, ch. 69, § 2.

**34-208. Duties of county clerks relating to supervision of election laws.** — In carrying out his exercise of general supervision under section 34-206[, Idaho Code], each county clerk shall:

(1) Require that each local election official shall use such ballots, papers, documents, records and other materials and supplies as directed by the secretary of state.

(2) Require each local election official in his county to submit reports pertaining to the administration of the election laws by such local election official. Each local election official shall comply with any such requirement.

(3) Inspect and observe the administration of the election laws by any local election official in his county at any time he deems necessary.

(4) Carry on a program of in-service training for local election officials in his county by periodically distributing to them such bulletins, manuals and other informational instructional materials and by establishing and conducting such classes of instruction pertaining to the administration of the election laws by local election officials as the county clerk considers desirable.

**History.**

1970, ch. 140, § 24, p. 351; am. 1971, ch. 69, § 3, p. 155.

**STATUTORY NOTES**

**Cross References.**

Requirements for printing of ballots and ballot labels, § 34-2418.

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

The bracketed insertion in the introductory paragraph was added by the compiler to conform to the statutory citation style.

**Effective Dates.**

Section 4 of S.L. 1971, ch. 69 declared an emergency. Approved March 8, 1971.

**34-209. Powers of county clerks.** — (1) The county clerk may employ such personnel and procure such equipment, supplies, materials, books, papers, records and facilities of every kind as he considers necessary to facilitate and assist in carrying out his functions in connection with administering the election laws; except that procurement of voting machines or vote tally systems shall be conducted in accordance with the provisions of section 34-2405, Idaho Code.

(2) The necessary expenses incurred by the county clerk in administering the election laws, including reasonable rental for polling places, shall be allowed by the board of commissioners and paid out of the county treasury.

(3) The county clerk and his deputies may administer oaths and affirmations in connection with the performance of their functions in administering the election laws.

**History.**

1970, ch. 140, § 25, p. 351; am. 1972, ch. 131, § 1, p. 260.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1972, ch. 131 declared an emergency. Approved March 13, 1972.

**34-210. Preparation of ballots, papers, documents, records, and other materials and supplies required.** — Subject to any applicable election law, the county clerk may devise, prepare and use in his administration of the election laws the ballots, papers, documents, records and other materials and supplies required or permitted by the election laws or otherwise necessary in such administration by such county clerk.

**History.**

1970, ch. 140, § 26, p. 351.

**STATUTORY NOTES**

**Cross References.**

Requirements for printing of ballots and ballot labels, § 34-2418.

**34-211. Office of county clerk open as long as polls are open.** — On the day of any general, special or primary election held throughout the county, the county clerk shall keep his office open for the transaction of business pertaining to the election from the time the polls are opened in the morning continuously until the polls are closed.

**History.**

1970, ch. 140, § 27, p. 351.

**34-212. Reports to prosecuting attorney of noncompliance with election laws by county clerk.** — (1) Any person having knowledge of any failure of a county clerk to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state may notify the prosecuting attorney of the county. Upon receipt of such notification the prosecuting attorney shall proceed immediately to investigate the alleged failure of the county clerk to comply. Upon the conclusion of the investigation the prosecuting attorney shall advise and direct the county clerk with regard to how he must proceed in connection with the matter. The county clerk shall proceed immediately to comply with the directive of the prosecuting attorney.

(2) If the prosecuting attorney, upon the conclusion of an investigation under subsection (1) of this section, determines that the county clerk has failed to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, and that such failure to comply involves a violation by the county clerk of any statute, the violation of which is punishable by a criminal penalty or forfeiture of office, the prosecuting attorney shall promptly proceed to prosecute such violation by the county clerk.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against a county clerk who fails to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, or who violates any statute.

**History.**

1970, ch. 140, § 28, p. 351.

**STATUTORY NOTES**

**Cross References.**

Criminal offenses relating to election laws, § 18-2301 et seq.

Secretary of state, § 67-901 et seq.

**34-213. Mandamus to enforce compliance by county clerk.** — (1) Whenever it appears to the secretary of state that a county clerk has failed to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, the secretary of state may apply to the appropriate district court or a judge thereof for a writ of mandamus to compel the county clerk to comply with such directive or instruction. In any such mandamus proceeding it is a defense that the directive or instruction in question is unlawful.

(2) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against a county clerk who fails to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state.

**History.**

1970, ch. 140, § 29, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.



**34-214. Noncompliance by local county election officials — Enforcement by county clerk.** — (1) Whenever it appears to a county clerk that any local election official in his county has failed to comply with any election law or any directive or instruction prepared and issued by the county clerk, the county clerk may issue an order to such local election official. The order shall specify in what manner the local election official has failed to comply, indicate the proper manner of compliance and direct the local election official to so comply with such law or directive or instruction within a designated reasonable time.

(2) If the local election official fails to comply as directed by the order of the county clerk, the county clerk may apply to a judge of the district court for the county in which the county clerk holds office for an order, returnable within five (5) days from the date thereof, to compel the local election official to comply with the order of the county clerk or to show cause why he should not be so compelled. Upon receipt of the application of the county clerk the judge shall issue the appropriate order, which shall be final. The judge shall dispose of the matter as soon as possible and not more than ten (10) days after his order is returned by the local election official.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against the non-complying local election official.

**History.**

1970, ch. 140, § 30, p. 351.

**34-215. Appeals by aggrieved persons.** — (1) Any person adversely affected by any act or failure to act by the secretary of state or a county clerk under any election law, or by any order, rule, regulation, directive or instruction made under the authority of the secretary of state or of a county clerk under any election law, may appeal therefrom to the district court for the county in which the act or failure to act occurred or in which the order, rule, regulation, directive or instruction was made or in which such person resides.

(2) Any party to the appeal proceedings in the district court under subsection (1) of this section may appeal from the decision of the district court to the supreme court.

(3) The district courts and supreme court, in their discretion, may give such precedence on their dockets to appeals under this section as the circumstances may require.

(4) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against any act or failure to act by the secretary of state or a county clerk under any election law or against any order, rule, regulation, directive or instruction made under the authority of the secretary of state or a county clerk under any election law.

**History.**

1970, ch. 140, § 31, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**34-216. Grievance procedures.** — The secretary of state shall promulgate rules in compliance with chapter 52, title 67, Idaho Code, establishing a state-based administrative complaint procedure as required by the help America vote act (P.L. 107-252).

**History.**

I.C., § 34-216, as added by 2003, ch. 48, § 2, p. 181.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Federal References.**

The help America vote act, referred to in this section, is codified as 52 U.S.C.S. § 20901 et seq.

**Effective Dates.**

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

**34-217. Retention of county election records.** — County election records shall be maintained by the county clerk for the time periods outlined in this section. Records shall be maintained for the period specified beginning with the date the record is created or has become no longer valid, whichever is greater.

(1) The following records shall be retained for not less than five (5) years: (a) Voter registration cards for electors whose registration has been terminated; (b) Correspondence relating to an elector's voter registration; (c) Combination election record and poll book, including the ballot accounting page; (d) Declaration of candidacy and petition of candidacy forms filed with the county clerk; (e) Maps of precinct boundaries with legal descriptions; (f) List of absentee voters; and

(g) County initiatives and petitions that qualify for placement on the ballot.

(2) The following shall be retained for two (2) years: (a) Completed absentee ballot request forms; (b) Tally books;

(c) Voted ballots;

(d) Any ballots that were required to be duplicated before being counted; (e) Certified lists of candidates or declaration of candidacy forms from special districts used for ballot preparation; and (f) Certified ballot language from special districts for any question placed on the ballot.

(3) The following shall be maintained for one (1) year: (a) Absentee ballot affidavit envelopes;

(b) Notice of election;

(c) Personal identification affidavit;

(d) Ballot tracking logs;

(e) Automated tabulation election logs;

(f) Copy of the election definition and program used in tabulating ballots electronically and in the ballot marking device; and (g) Record of the number of ballots printed and furnished to each polling place.

(4) Other election supplies including, but not limited to, unused ballots, official election ballot identification or official ballot stamps, receipts for supplies and spoiled ballots may be disposed of sixty (60) days following the deadline for requesting a recount or filing an election contest pursuant to chapters 20 and 21, title 34, Idaho Code.

### **History.**

I.C., § 34-217, as added by 2011, ch. 285, § 2, p. 778; am. 2012, ch. 211, § 2, p. 571; am. 2013, ch. 285, § 1, p. 735; am. 2018, ch. 78, § 1, p. 177.

## **STATUTORY NOTES**

### **Amendments.**

The 2012 amendment, by ch. 211, redesignated former paragraphs (3)(a), (e), and (h) as paragraphs (2)(c), (d) and (e), redesignated the other paragraphs in subsection (3) accordingly.

The 2013 amendment, by ch. 285, substituted “ballot identification” for “stamps” in subsection (4).

The 2018 amendment, by ch. 78, in subsection (1), inserted present paragraph (b) and redesignated the subsequent paragraphs accordingly, added “including the ballot accounting page” in present paragraph (c), added “and petition of candidacy forms filed with the county clerk” in present paragraph (d), and added paragraph (g); in subsection (2), deleted former paragraph (a), which read: “Correspondence relating to an elector’s voter registration” and redesignated the subsequent paragraphs accordingly and added paragraphs (e) and (f); deleted former paragraph (3)(d), which read: “Unvoted ballots from the primary election”, and redesignated the subsequent paragraphs accordingly; and inserted “or official ballot stamps, receipts for supplies” near the middle of subsection (4).

### **Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.



## **CHAPTER 3**

### **ELECTION PRECINCTS AND JUDGES**

#### **Section.**

- 34-301. Establishment of election precincts by county commissioners —  
Lists and maps to be furnished to secretary of state.
- 34-302. Designation of precinct polling places.
- 34-303. Appointment of election judges by county clerk.
- 34-304. Challengers — Watchers.
- 34-305. County clerk chief county elections officer.
- 34-306. Precinct boundary requirements.
- 34-307. Precinct boundaries maintained.
- 34-308. Mail ballot precinct.

**34-301. Establishment of election precincts by county commissioners — Lists and maps to be furnished to secretary of state.** — (1) The board of county commissioners in each county shall establish a convenient number of election precincts therein. The board of county commissioners may establish an absentee voting precinct for each legislative district within the county. The boundaries of such absentee precincts shall be the same as those of the legislative districts for which they were established. The board shall have the authority to create new or consolidate established precincts only within the boundaries of legislative districts. No county shall have less than two (2) precincts. This board action shall be done no later than January 15 in a general election year. The January 15 deadline shall be waived during a general election year in which a legislative or court-ordered redistricting plan is adopted. In such cases, any precinct boundary adjustments shall be accomplished by the county commissioners as soon as is practicable.

(2) The county clerk of each county shall provide, and the secretary of state shall maintain in his office, a current and accurate report of the following: (a) A list of all precincts within the county; (b) A map and description of all precincts within the county; (c) A count of voters registered for the latest general election, by precinct; and (d) A count of votes cast at the latest general election, by precinct.

### **History.**

1970, ch. 140, § 32, p. 351; am. 1971, ch. 210, § 1, p. 919; am. 1972, ch. 141, § 1, p. 308; am. 1973, ch. 177, § 1, p. 393; am. 1974, ch. 212, § 1, p. 1557; am. 1976, ch. 73, § 1, p. 242; am. 1977, ch. 8, § 3, p. 16; am. 1992, ch. 152, § 1, p. 458; am. 2009, ch. 52, § 13, p. 136; am. 2019, ch. 96, § 1, p. 344.

## **STATUTORY NOTES**

### **Prior Laws.**

Former §§ 34-301 to 34-304 which comprised 1890-1891, p. 57, §§ 20 to 23, 36; am. 1897, p. 29, § 2; reen. 1899, p. 33, §§ 12 to 15, 27; reen. R.C.,



§§ 353, 356; am. R.C., §§ 354, 355; am. 1913, ch. 92, §§ 13, 14, p. 376; reen. C.L., §§ 353 to 356; C.S., §§ 498 to 501; I.C.A., §§ 33-301 to 33-304; am. 1953, ch. 233, §§ 2, 3, p. 348; am. 1955, ch. 73, § 1, p. 143, were repealed by S.L. 1970, ch. 140, § 204.

### **Amendments.**

The 2009 amendment, by ch. 52, in the fourth sentence, deleted “provided by [section 67-202, Idaho Code](#)” from the end.

The 2019 amendment, by ch. 96, added the subsections designators to the existing provisions of the section, and inserted “and description” near the beginning of paragraph (2)(b).

### **Compiler’s Notes.**

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

### **Effective Dates.**

Section 2 of S.L. 1992, ch. 152 declared an emergency. Approved April 2, 1992.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

**34-302. Designation of precinct polling places.** — The board shall, by the fifth Friday before any election, designate a suitable polling place for each election precinct. Insofar as possible, the board shall designate the same polling place for the general election that it designated for the primary election. The physical arrangements of the polling place shall be sufficient to guarantee all voters the right to cast a secret ballot. Public school facilities shall be made available to the board as precinct polling places. All polling places designated as provided herein shall conform to the accessibility standards adopted by the secretary of state pursuant to the voting accessibility for the elderly and handicapped act, 52 U.S.C. 20101 et seq. The expense of providing such polling places shall be a public charge and paid out of the county treasury.

**History.**

1970, ch. 140, § 33, p. 351; am. 1973, ch. 304, § 2, p. 646; am. 1978, ch. 38, § 1, p. 67; am. 1985, ch. 115, § 2, p. 237; am. 2019, ch. 96, § 2, p. 344; 2019, ch. 283, § 1, p. 824.

**STATUTORY NOTES**

**Cross References.**

Absent electors' polling place required, § 34-1006.

Preparation of polling places for machine voting, § 34-2415.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-302 was repealed. See Prior Laws, § 34-301.

**Amendments.**

This section was amended by two 2019 acts which appear to be compatible and have been compiled together.

The 2019 amendment, by ch. 96, substituted “by the fifth Friday” for “not less than thirty (30) days” in the first sentence and substituted “**52 U.S.C. 20101 et seq.**” for “**P.L. 98-435**” at the end of the fifth sentence.

The 2019 amendment, by ch. 283, inserted the present fourth sentence.

**Effective Dates.**

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

Section 2 of S.L. 2019, ch. 283 provided that the act should take effect on and after July 1, 2020.

**34-303. Appointment of election judges by county clerk.** — (1) The county clerk shall appoint two (2) or more election judges, one (1) of whom shall be designated chief judge, and the number of clerks deemed necessary by him for each polling place. In the event a single polling place is designated for two (2) or more precincts, an individual may serve simultaneously on the election board for two (2) or more precincts thus served by a single polling place. The precinct committeemen shall recommend persons for the position in their respective precincts to the county clerk in writing by the fifth Friday prior to the primary election and the county clerk shall appoint the judges from such lists if the persons recommended are qualified.

(2) The chief election judge shall be responsible for the conduct of the proceedings in the polling place. Compensation for all election personnel shall be determined by the board of county commissioners at no less than the minimum wage as prescribed by the laws of the state of Idaho.

(3) Each election board shall contain personnel representing all existing political parties if a list of applicants has been provided to the county clerk by the precinct committeemen of the precincts by the prescribed deadline.

(4) In order to provide for a greater awareness of the election process, the rights and responsibilities of voters and the importance of participating in the electoral process, as well as to provide additional members of precinct boards, a county clerk may appoint not more than two (2) students per precinct to serve under the direct supervision of election board members designated by the county clerk. A student may be appointed, notwithstanding lack of eligibility to vote, if the student possesses the following qualifications: (a) Is at least sixteen (16) years of age at the time of the election for which he or she is serving as a member of an election board; and (b) Is a citizen of the United States.

### **History.**

1970, ch. 140, § 34, p. 351; am. 1971, ch. 210, § 2, p. 919; am. 1977, ch. 8, § 4, p. 16; am. 2003, ch. 48, § 3, p. 181; am. 2004, ch. 113, § 1, p. 386; am. 2018, ch. 154, § 1, p. 311; am. 2019, ch. 96, § 3, p. 344.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-303 was repealed. See Prior Laws, § 34-301.

### **Amendments.**

The 2018 amendment, by ch. 154, designated the former four undesignated paragraphs as subsections (1) through (4) and former subsections (1) and (2) as paragraphs (4)(a) and (4)(b) and substituted “sixteen (16)” for “seventeen (17)” in paragraph (4)(a).

The 2019 amendment, by ch. 96, substituted “by the fifth Friday prior to the primary election” for “at least ten (10) days prior to the date on which any appointment shall be made” near the middle of the last sentence in subsection (1); and substituted “by the prescribed deadline” for “at least sixty (60) days prior to the primary election” at the end of subsection (3).

### **Effective Dates.**

Section 5 of S.L. 1977, ch. 8 declared an emergency. Approved February 23, 1977.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

**34-304. Challengers — Watchers.** — The county clerk shall, upon receipt of a written request, such request to be received no later than twelve (12) days prior to the day of election, direct that the election judges permit one (1) person authorized by each political party, if the election is a partisan election, to be at the polling place for the purpose of challenging voters, and shall, if requested, permit any one (1) person authorized by a candidate, several candidates or political party, to be present to serve as a watcher to observe the conduct of the election. Such authorization shall be evidenced by a writing signed by the county chairman and secretary of the political party, if the election is a partisan election, or by the candidate or candidates, and filed with the county clerk. Where the issue before the electors is other than the election of officers, the clerk shall, upon receipt of a written request, such request to be received no later than twelve (12) days prior to the date of voting on the issue or issues, direct that the election judges permit one (1) pro and one (1) con person to be at the polling place for the purpose of challenging voters and to observe the conduct of the election. Such authorization shall be evidenced in writing signed by the requesting person and shall state which position relative to the issue or issues the person represents. Persons who are authorized to serve as challengers or watchers shall wear a visible name tag which includes their respective titles. A watcher is entitled to observe any activity conducted at the location at which the watcher is serving, provided however, that the watcher does not interfere with the orderly conduct of the election. If the watchers are present at the polling place when ballots are counted they shall not absent themselves until the polls are closed. A watcher serving at a central counting station may be present at any time the station is open for the purpose of processing or preparing to process election results and until the election officers complete their duties at the station. If the county clerk does not receive the list of names of those desired to be present for the purpose of either poll watching or challenging within the time prescribed above, the clerk shall not allow the presence of such persons later seeking to serve in those capacities.

**History.**

1970, ch. 140, § 35, p. 351; am. 1972, ch. 141, § 2, p. 308; am. 1973, ch. 304, § 3, p. 646; am. 2006, ch. 70, § 1, p. 214; am. 2009, ch. 341, § 56, p. 993.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-304 was repealed. See Prior Laws, § 34-301.

### **Amendments.**

The 2006 amendment, by ch. 70, rewrote the section, which formerly read: “The county clerk shall, upon receipt of a written request, such request to be received no later than five (5) days prior to the day of election, direct that the election judges permit one (1) person authorized by each political party to be at the polling place for the purpose of challenging voters, and shall, if requested, permit any candidate, or one (1) person authorized by a candidate, several candidates or political party, to be present to watch the receiving and counting of the votes. Such authorization shall be evidenced by a writing signed by the county chairman and secretary of the political party, or by the candidate or candidates, and filed with the county clerk. If the county clerk does not receive the list of names of those which the parties desire to be present for the purpose of either poll watching or challenging within the time prescribed above, the clerk shall not allow the presence of such persons later seeking to serve in those capacities. Persons who are authorized to serve as challengers or watchers shall wear a visible name tag which includes their respective titles. Persons permitted to be present to watch the counting of the votes shall not absent themselves until the polls are closed.”

The 2009 amendment, by ch. 341, twice substituted “twelve (12) days” for “five (5) days” and, in the first and second sentences, inserted “if the election is a partisan election.”

### **Effective Dates.**

Section 3 of S.L. 1972, ch. 141 declared an emergency. Approved March 14, 1972.

Section 5 of S.L. 2006, ch. 70 declared an emergency. Approved March 15, 2006.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**34-305. County clerk chief county elections officer.** — The county clerk is the chief elections officer of his county and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws. The county clerk shall comply with the lawful directives and instructions given him by the secretary of state.

**History.**

I.C., § 34-305, as added by 1971, ch. 210, § 3, p. 919.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**34-306. Precinct boundary requirements.** — (1) Precinct boundaries shall follow visible, easily recognizable physical features on the ground including, but not limited to, streets, railroad tracks, roads, streams and lakes. The exception shall be when a precinct boundary coincides with a city, county, Indian reservation or school district boundary which does not follow a visible feature.

(2) In order to achieve compliance with the requirements of this section, and simultaneously maintain legislative district boundaries which may not follow visible features, a county may designate subprecincts within precincts, the internal boundaries of which do not follow visible features.

**History.**

I.C., § 34-306, as added by 1977, ch. 8, § 2, p. 16; am. 1989, ch. 261, § 1, p. 639; am. 1992, ch. 284, § 1, p. 875.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 1 of S.L. 1977, ch. 8 read: "The Idaho legislative council is designated the state coordinating agency for purposes of implementation of the provisions of public law 94-171 [[13 U.S.C.S. § 141](#)]. Not later than March 1, 1977, each county clerk shall provide the legislative council with a map of the precincts of the county. Map standards shall comply with the requirements promulgated by the census bureau for the purposes of the 1980 census of the United States. Precinct boundaries shall comply with the provisions of [section 34-306, Idaho Code](#)."

**Effective Dates.**

Section 5 of S.L. 1977, ch. 8 declared an emergency. Approved February 23, 1977.

Section 2 of S.L. 1992, ch. 284 provided that the act would become effective January 1, 1993.

**34-307. Precinct boundaries maintained.** — From January 15 in any year ending in 8 through September 15 in any year ending in 1, the board of county commissioners shall make no changes in precinct boundaries, except that a single precinct may be divided into two (2) or more new precincts wholly contained within the original precinct.

**History.**

I.C., § 34-307, as added by 1998, ch. 276, § 1, p. 907.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1998, ch. 276 declared an emergency. Approved March 24, 1998.

**34-308. Mail ballot precinct.** — (1) A precinct within the county that contains no more than one hundred forty (140) registered electors at the last general election may be designated by the board of county commissioners as a mail ballot precinct no later than April 1 in an even-numbered year. Such a designation shall apply thereafter to all elections conducted within the precinct until revoked by the board of county commissioners or until the precinct contains one hundred fifty-one (151) registered electors at the last general election. Having designated a mail ballot precinct, there shall be no voting place established within the precinct. Elections in a mail ballot precinct shall be conducted in a manner consistent with absentee voting with the special provisions provided in this section.

(2) The clerk shall issue a ballot, by mail, to every registered voter in a mail ballot precinct and shall affix postage to the return envelope sufficient to return the ballot.

(3) The ballot shall be mailed no sooner than twenty-four (24) days prior to the election day and no later than the fourteenth day prior to the election.

(4) The clerk shall make necessary provisions to segregate mail ballot precinct ballots by precinct and, for all purposes of the election, the precinct integrity shall be maintained.

(5) The clerk shall make registration available in the office of the clerk on election day for any individual who is eligible to vote and who resides in a mail ballot precinct and has not previously registered. The clerk shall provide an official polling place in the office of the clerk, and a qualified elector who registers on election day and resides in a mail ballot precinct shall be allowed to vote at the office of the clerk.

(6)(a) Except as provided in paragraph (b) of this subsection, electors who have designated a political party affiliation pursuant to [section 34-404, Idaho Code](#), shall receive the primary election ballot for that party pursuant to sections 34-904 and 34-904A, Idaho Code.

(b) Electors who have designated a political party affiliation pursuant to [section 34-404, Idaho Code](#), may receive the primary election ballot of a political party other than the political party such elector is affiliated with

if such other political party has provided notification to the secretary of state that identifies the political party such elector is affiliated with, as provided for in [section 34-904A\(2\) \(b\), Idaho Code](#).

(7) For “unaffiliated” electors, in order to receive a political party’s primary election ballot pursuant to [section 34-904A, Idaho Code](#), the county clerk shall mail a ballot request form for the primary election ballot to the electors in a mail ballot precinct for the electors to use in selecting the party ballot they choose to receive.

(a) In the event that more than one (1) political party allows electors designated as “unaffiliated” to vote in their party’s primary election pursuant to [section 34-904A, Idaho Code](#), an elector designated as “unaffiliated” shall indicate on the form such elector’s choice of the political party’s primary election ballot in order to vote in that party’s primary election.

(b) In the event no more than one (1) political party allows electors designated as “unaffiliated” to vote in their party’s primary election pursuant to [section 34-904A, Idaho Code](#), an elector designated as “unaffiliated” shall indicate on the form that political party’s primary election ballot in order to vote in that political party’s primary election.

(c) If an elector designated as “unaffiliated” is not permitted to vote in a political party’s primary election as provided for in [section 34-904A, Idaho Code](#), such elector shall receive a nonpartisan ballot.

(d) If an elector designated as “unaffiliated” does not indicate on the form a choice of political party’s primary election ballot, such elector shall receive a nonpartisan ballot.

### **History.**

[I.C., § 34-308](#), as added by 2004, ch. 165, § 1, p. 540; am. 2011, ch. 319, § 2, p. 929; am. 2019, ch. 97, § 1, p. 355.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

## **Amendments.**

The 2011 amendment, by ch. 319, added subsections (5) and (6).

The 2019 amendment, by ch. 97, added the subsection (1) designator to the first paragraph and redesignated former subsections (1) to (6) as subsections (2) to (7); in present subsection (1), substituted “one hundred forty (140)” for “one hundred twenty-five (125)” near the beginning and inserted “as” following “commissioners” near the end of the first sentence, added “or until the precinct contains one hundred fifty-one (151) registered electors at the last general election” at the end of the second sentence, and substituted “special provisions provided in this section” for “following special provisions” at the end of the last sentence.

## **Legislative Intent.**

Section 1 of S.L. 2011, ch. 319 provided: “Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party’s candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the **First** and **Fourteenth Amendments** to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections.”

## **Effective Dates.**

Section 2 of S.L. 2004, ch. 165 declared an emergency. Approved March 23, 2004.



## **CHAPTER 4**

### **VOTERS — PRIVILEGES, QUALIFICATIONS AND REGISTRATION**

#### **Section.**

34-401. Electors privileged from arrest during attendance at polling place — Exception.

34-402. Qualifications of electors.

34-403. Disqualified electors not permitted to vote.

34-404. Registration of electors.

34-405. Gain or loss of residence by reason of absence from state.

34-406. Appointment of registrars.

34-407. Procedure for registration.

34-408. Closing of register — Time limit.

34-408A. Election day registration.

34-409. Electronic registration.

34-410. Mail registration.

34-410A. Absentee registration for uniformed and overseas citizens.

34-411. Application for registration — Contents.

34-411A. Primary elections — Changing party affiliation — Unaffiliated electors.

34-412. Qualifications for registration.

34-413. Reregistration of elector who changes residence.

34-414, 34-415. [Repealed.]

34-416. Registration applications.

34-417. Changes in boundaries of precinct — Alteration of registration cards. [Repealed.]



- 34-418. Weekly review of new registration cards — Report to interested officials.
- 34-419. Suspension of registration of electors who appear not to be citizens of the United States.
- 34-420. No elector's registration shall be canceled while serving in the armed forces — Exception.
- 34-421 — 34-430. [Repealed.]
- 34-431. Challenges of entries in election register.
- 34-432. Correction of election register from challenges at election.
- 34-433. Monthly correction of election register from reported deaths.
- 34-434. Retention of notices and correspondence relating to correction of election registers.
- 34-435. Cancellation of registrations following any general election of those not voting for four years.
- 34-436. Retention of correspondence relating to cancellation of voter's registration.
- 34-437. Furnishing lists of registered electors — Restrictions.
- 34-437A. Statewide list of registered electors.
- 34-437B. Furnishing lists of registered electors to school districts.
- 34-438. Data-processing systems — Use for voter registration. [Repealed.]
- 34-439. Disclosures in elections to authorize bonded indebtedness.
- 34-439A. Disclosures in elections to authorize levy.

**34-401. Electors privileged from arrest during attendance at polling place — Exception.** — Electors are privileged from arrest, except for treason, a felony or breach of the peace, during their attendance at a polling place.

**History.**

1970, ch. 140, § 36, p. 351.

**STATUTORY NOTES**

**Cross References.**

Penalty for fraudulent or illegal registration, §§ 18-2321, 18-2322.

**Prior Laws.**

The following former sections were repealed by S.L. 1970, ch. 140, § 205: 34-401. (1890-1891, p. 57, § 2; reen. 1899, p. 33, § 2; compiled and reen. R.C. & C.L., § 357; C.S., § 502; I.C.A., § 33-401.) 34-402. (1890-1891, p. 57, § 3; am. 1893, p. 35, § 1; am. 1895, p. 7, § 1; reen. 1899, p. 33, § 3; reen. R.C. & C.L., § 358; C.S., § 503; I.C.A., § 33-402.) 34-403. (1890-1891, p. 57, § 4; reen. 1899, p. 33, § 4; reen. R.C. & C.L., § 359; C.S., § 504; I.C.A., § 33-403.) 34-404. (1907, p. 170, § 1; reen. R.C. & C.L., § 360; C. S., § 505; I.C.A., § 33-404.) 34-405. (1907, p. 170, § 2; am. R.C., § 361; am. 1913, ch. 92, § 15, p. 377; reen. C.L., § 361; C.S., § 506; I.C.A., § 33-405.

34-406. (1907, p. 170, § 3; reen. R.C. & C.L., § 362; C.S., § 507; I.C.A., § 33-406.) 34-407. (1907, p. 170, § 4; reen. R.C., § 363; am. 1913, ch. 92, § 16, p. 377; reen. C.L., § 363; C.S., § 508; I.C.A., § 33-407.) 34-408. (1963, ch. 268, § 1, p. 681.) 34-409. (1963, ch. 268, § 2, p. 681.) 34-410. (1963, ch. 268, § 3, p. 681.)

**34-402. Qualifications of electors.** — Every male or female citizen of the United States, eighteen (18) years old, who has resided in this state and in the county for thirty (30) days where he or she offers to vote prior to the day of election, if registered within the time period provided by law, is a qualified elector.

**History.**

1970, ch. 140, § 37, p. 351; am. 1971, ch. 192, § 1, p. 874; am. 1972, ch. 392, § 1, p. 1131; am. 1973, ch. 304, § 4, p. 646; am. 1982, ch. 253, § 2, p. 645.

**STATUTORY NOTES**

**Cross References.**

“Qualified elector” defined, § 34-104.

**Prior Laws.**

Former § 34-402 was repealed. See Prior Laws, § 34-401.

**JUDICIAL DECISIONS**

**Cited in:** *Noh v. Cenarrusa*, 137 Idaho 798, 53 P.3d 1217 (2002).

**RESEARCH REFERENCES**

**A.L.R.** — Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 A.L.R.3d 303.

Residence or domicile of student or teacher for purpose of voting. 44 A.L.R.3d 797.

Residence of students for voting purposes. 44 A.L.R.3d 797.

Voting rights of persons mentally incapacitated. 80 A.L.R.3d 1116.

Constitutionality of voter participation provisions for primary elections. 120 A.L.R.5th 125.

Validity of residency and precinct-specific requirements of state voter registration statutes. [57 A.L.R.6th 419](#).

**34-403. Disqualified electors not permitted to vote.** — No elector shall be permitted to vote if he is disqualified as provided in article 6 [VI], sections 2 and 3 of the state constitution.

**History.**

1970, ch. 140, § 38, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-403 was repealed. See Prior Laws, § 34-401.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to reflect the designation scheme present in the Idaho Constitution.

**JUDICIAL DECISIONS**

**Decisions Under Prior Law Polygamists.**

Territorial statute withholding elective franchise from polygamists or members of any organization which taught or encouraged polygamy and prescribing test oath was not repugnant to federal constitution. **Wooley v. Watkins**, 2 Idaho 590, 22 P. 102 (1889).

**34-404. Registration of electors.** — (1) All electors must register before being able to vote at any primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code. Registration of a qualified person occurs when a legible, accurate and complete registration application is received in the office of the county clerk or is received at the polls pursuant to section 34-408A, Idaho Code.

(2) Each elector may select on the registration application an affiliation with a political party qualified to participate in elections pursuant to [section 34-501, Idaho Code](#), or may select to be designated as “unaffiliated.” The county clerk shall record the party affiliation or “unaffiliated” designation so selected as part of the elector’s registration record. If an elector shall fail or refuse to make such a selection, the county clerk shall enter on the registration records that such elector is “unaffiliated.”

(3) In order to provide an elector with the appropriate primary election ballot, pursuant to [section 34-904A, Idaho Code](#), the poll book for primary elections shall include the party affiliation or designation as “unaffiliated” for each elector so registered. An “unaffiliated” elector shall declare to the poll worker which primary election ballot the elector chooses to vote in, pursuant to [section 34-904A, Idaho Code](#), and the poll worker or other authorized election personnel shall record such declaration in the poll book. The poll book shall contain checkoff boxes to allow the poll worker or other authorized election personnel to record such “unaffiliated” elector’s selection.

(4) In order to provide electors who are already registered to vote, and who remain registered electors, with an opportunity to select a party affiliation or to select their status as “unaffiliated,” the poll book for the 2012 primary election shall include checkoff boxes by which the poll worker or other appropriate election personnel shall record such elector’s choice of party affiliation or choice to be designated as “unaffiliated.” After the 2012 primary election, the county clerk shall record the party affiliation or “unaffiliated” designation so selected in the poll book as part of such an elector’s record within the voter registration system as provided for in [section 34-437A, Idaho Code](#).

(5) After the 2012 primary election, electors who remain registered voters and who did not vote in the 2012 primary election or who have not selected party affiliation or who have not selected to be designated as “unaffiliated,” shall be designated as “unaffiliated” and the county clerk shall record that designation for each such elector within the voter registration system as provided for in [section 34-437A, Idaho Code](#).

### **History.**

1970, ch. 140, § 39, p. 351; am. 1971, ch. 192, § 2, p. 874; am. 1972, ch. 197, § 1, p. 498; am. 1987, ch. 256, § 2, p. 519; am. 1997, ch. 356, § 1, p. 1051; am. 2011, ch. 319, § 3, p. 929; am. 2016, ch. 359, § 3, p. 1052.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-404 was repealed. See Prior Laws, § 34-401.

### **Amendments.**

The 2011 amendment, by ch. 319, added subsections (2) through (5) and added the subsection (1) designation to the existing provisions.

The 2016 amendment, by ch. 359, substituted “registration application” for “registration card” in the last sentence in subsection (1) and in the first sentence in subsection (2).

### **Legislative Intent.**

Section 1 of S.L. 2011, ch. 319 provided: “Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party’s candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the [First](#) and [Fourteenth Amendments](#) to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a

mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections.”

### **Effective Dates.**

Section 5 of S.L. 1987, ch. 256, (approved April 1, 1987 at 9:45 AM) declared an emergency. However, such section was repealed by § 1, of S.L. 1987, ch. 252 (approved and effective April 1, 1987 at 2:50 PM).

Section 2 of S.L. 1972, ch. 197 declared an emergency. Approved March 21, 1972.

Section 10 of S.L. 2016, ch. 359 declared an emergency. Approved April 5, 2016.

## **JUDICIAL DECISIONS**

**Cited in:** [Cenarrusa v. Peterson, 95 Idaho 395, 509 P.2d 1316 \(1973\).](#)

Decisions Under Prior Law

### **Condition Precedent to Voting.**

Registration is condition precedent to right to vote. [Jaycox v. Varnum, 39 Idaho 78, 226 P. 285 \(1924\).](#)

## **RESEARCH REFERENCES**

**A.L.R.** — Validity of college or university regulation of political or voter registration activity in student housing facilities. [39 A.L.R.4th 1137.](#)

Validity of statute restricting voter registration solicitations by third parties or organizations. [55 A.L.R.6th 599.](#)

Validity of residency and precinct-specific requirements of state voter registration statutes. [57 A.L.R.6th 419.](#)



**34-405. Gain or loss of residence by reason of absence from state. —**

For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his absence while employed in the service of this state or the United States, while a student of any institution of learning, while kept at any state institution at public expense, nor absent from the state with the intent to have this state remain his residence. If a person is absent from this state but intends to maintain his residence for voting purposes here, he shall not register to vote in any other state during his absence.

**History.**

1970, ch. 140, § 40, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-405 was repealed. See Prior Laws, § 34-401.

**34-406. Appointment of registrars.** — (1) The county clerk shall provide for voter registration in the clerk's office and may appoint registrars to assist in voter registration throughout the county.

(2) The county clerk shall provide all political parties within the county with a supply of the registration form prescribed in [section 34-411, Idaho Code](#).

### **History.**

[I.C., § 34-406](#), as added by 1994, ch. 67, § 3, p. 137; am. 2011, ch. 319, § 4, p. 929.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-406, which comprised 1970, ch. 140, § 41, p. 351; am. 1971, ch. 192, § 3, p. 874; am. 1972, ch. 392, § 2, p. 1131; am. 1975, ch. 21, § 1, p. 30; am. 1980, ch. 271, § 1, p. 711; am. 1982, ch. 76, § 1, p. 144; am. 1989, ch. 418, § 1, p. 1022, was repealed by S.L. 1994, ch. 67, § 2, effective January 1, 1995.

Another former § 34-406 was repealed. See Prior Laws, § 34-401.

### **Amendments.**

The 2011 amendment, by ch. 319, added the subsection designations and, in subsection (2), deleted “mail” preceding “registration” and substituted “section 34-411” for “section 34-410”.

### **Legislative Intent.**

Section 1 of S.L. 2011, ch. 319 provided: “Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in

primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the **First** and **Fourteenth Amendments** to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections.”

**Compiler’s Notes.**

Subdivision 5 of § 1 of S.L. 1994, ch. 67 provided that the purpose of this act was “to exempt Idaho from compliance with the National Voter Registration Act of 1993, as provided in section 4(b)(2) of that act.”

**Effective Dates.**

Section 8 of S.L. 1994, ch. 67 provided that “An emergency existing therefor, which emergency is hereby declared to exist, the provisions of Sections 1 and 5 of this act shall be in full force and effect on and after passage and approval and retroactively to March 10, 1993, and the remaining Sections of this act shall be in full force and effect on and after January 1, 1995.” Approved March 7, 1994.

**34-407. Procedure for registration.** — (1) Any county clerk or official registrar shall register without charge any elector who personally appears in the office of the county clerk or before the official registrar, as the case may be, and requests to be registered.

(2) Upon receipt of a written application to the county clerk from any elector who, by reason of illness or physical incapacity is prevented from personally appearing in the office of the county clerk or before an official registrar, the county clerk or an official registrar so directed by the county clerk shall register such elector at the place of abode of the elector.

**History.**

1970, ch. 140, § 42, p. 351; am. 1971, ch. 192, § 4, p. 874; am. 1991, ch. 337, § 1, p. 873; am. 1995, ch. 215, § 2, p. 747.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-407 was repealed. See Prior Laws, § 34-401.

**JUDICIAL DECISIONS**

Decisions Under Prior Law Substantial Compliance.

Strict, literal compliance with provisions of law as to registration will not be required in absence of fraud or intentional wrong. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

When person otherwise qualified to vote diligently attempts to register in manner and time provided by law and does everything in his power to comply with law, he cannot be deprived of vote by failure of officers to do their duty. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

**34-408. Closing of register — Time limit.** — (1) No elector may register in the office of the county clerk within twenty-four (24) days preceding any election held throughout the county in which he resides for the purpose of voting at such election; provided however, a legible, accurate and complete registration application received in the office of the county clerk during the twenty-four (24) day period preceding an election shall be accepted and held by the county clerk until the day following the election when registration reopens, at which time the registration shall become effective. This deadline shall also apply to any registrars the county clerk may have appointed.

(2) Any elector who will complete his residence requirement or attain the requisite voting age during the period when the register of electors is closed may register prior to the closing of the register.

(3) Notwithstanding subsection (1) of this section, an individual who is eligible to vote may also register, upon providing proof of residence, at the “absent electors’ polling place” provided in [section 34-1006, Idaho Code](#).

### **History.**

1970, ch. 140, § 43, p. 351; am. 1971, ch. 192, § 5, p. 874; am. 1974, ch. 172, § 1, p. 1431; am. 1981, ch. 105, § 1, p. 159; am. 1994, ch. 67, § 4, p. 137; am. 2001, ch. 99, § 1, p. 248; am. 2005, ch. 127, § 1, p. 412; am. 2016, ch. 359, § 4, p. 1052.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-408 was repealed. See Prior Laws, § 34-401.

### **Amendments.**

The 2016 amendment, by ch. 359, substituted “registration application” for “registration card” near the middle of the first sentence in subsection (1).

### **Compiler’s Notes.**

Subdivision 5 of § 1 of S.L. 1994, ch. 67 provided that the purpose of this act was “to exempt Idaho from compliance with the National Voter Registration Act of 1993, as provided in section 4(b)(2) of that act.”

**Effective Dates.**

Section 8 of S.L. 1994, ch. 67 provided that “An emergency existing therefor, which emergency is hereby declared to exist, the provisions of Sections 1 and 5 of this act shall be in full force and effect on and after passage and approval and retroactively to March 10, 1993, and the remaining Sections of this act shall be in full force and effect on and after January 1, 1995.” Approved March 7, 1994.

Section 10 of S.L. 2016, ch. 359 declared an emergency. Approved April 5, 2016.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of statute limiting time period for voter registration.  
[56 A.L.R.6th 523](#).

**34-408A. Election day registration.** — An individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a registration application, making an oath in the form prescribed by the secretary of state and providing proof of residence. An individual may prove residence for purposes of registering by:

(1) Showing an Idaho driver's license or Idaho identification card issued through the department of transportation; or

(2) Showing any document which contains a valid address in the precinct together with a picture identification card; or

(3) Showing a current valid student photo identification card from a postsecondary educational institution in Idaho accompanied with a current student fee statement that contains the student's valid address in the precinct.

Election day registration provided in this section shall apply to all elections conducted under title 34, Idaho Code, and to school district and municipal elections.

An individual who is eligible to vote may also register, upon providing proof of residence, at the "absent electors' polling place" provided in [section 34-1006, Idaho Code](#).

### **History.**

[I.C., § 34-408A](#), as added by 1994, ch. 67, § 5, p. 137; am. 1995, ch. 215, § 3, p. 747; am. 1997, ch. 356, § 2, p. 1051; am. 2011, ch. 285, § 3, p. 778; am. 2016, ch. 359, § 5, p. 1052.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 285, inserted "Idaho" preceding "driver's license" in subsection (1); and, in subsection (3), inserted "photo"

preceding “identification card” near the beginning and deleted “together with a picture identification card” at the end.

The 2016 amendment, by ch. 359, substituted “registration application” for “registration card” near the end of the first sentence in the introductory paragraph.

### **Compiler’s Notes.**

Subdivision 5 of § 1 of S.L. 1994, ch. 67 provided that the purpose of this act was “to exempt Idaho from compliance with the National Voter Registration Act of 1993, as provided in section 4(b)(2) of that act.”

### **Effective Dates.**

Section 8 of S.L. 1994, ch. 67 provided that “An emergency existing therefor, which emergency is hereby declared to exist, the provisions of Sections 1 and 5 of this act shall be in full force and effect on and after passage and approval and retroactively to March 10, 1993, and the remaining Sections of this act shall be in full force and effect on and after January 1, 1995.” Approved March 7, 1994.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

Section 10 of S.L. 2016, ch. 359 declared an emergency. Approved April 5, 2016.



**34-409. Electronic registration.** — (1) The office of the secretary of state may create and maintain an electronic system for voter registration that is publicly available on its official website. Any qualified elector who has a current valid driver's license or identification card issued pursuant to title 49, Idaho Code, that reflects the person's current principal place of residence, may register to vote by submitting a completed voter registration application electronically through such website. Electronic voter registration applications shall be submitted before the close of registration as provided in section 34-408, Idaho Code.

(2) The electronic voter registration application shall be in a form prescribed by the secretary of state and shall:

(a) Require the information under oath or affirmation set forth in [section 34-411, Idaho Code](#);

(b) Include notice of the requirement to provide personal identification before voting at the polls as set forth in sections 34-1113 and 34-1114, Idaho Code; and

(c) Require an electronic signature of the applicant.

(3) The office of the secretary of state shall obtain a digital copy of the applicant's driver's license or identification card signature from the Idaho transportation department. The Idaho transportation department shall, upon request of the office of the secretary of state, provide a digital copy of the applicant's driver's license or identification card signature.

(4) Upon receipt of a completed voter registration application and a digital copy of the applicant's driver's license or identification card signature from the Idaho transportation department, the office of the secretary of state shall send the information to the county clerk for the county in which the applicant resides. The county clerk shall prepare and issue to each elector registering electronically a verification of registration containing the name and residence of the elector and the name or number of the precinct in which the elector resides. Such verification of registration may be sent by nonforwardable first-class mail or by electronic mail at the

elector's option. If a verification is returned undeliverable, then the county clerk shall remove the elector from the register of electors.

(5) An applicant using the electronic system for voter registration pursuant to this section shall not be required to complete a printed registration card.

(6) The office of the secretary of state shall use such security measures necessary to ensure the accuracy and integrity of an electronically submitted voter registration application.

### **History.**

[I.C., § 34-409](#), as added by 2016, ch. 359, § 1, p. 1052.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 33-409, Bond election and levy increases — Time for filing — Validation of elections and bonds, which comprised [I.C., § 33-409](#), as added by S.L. 1982, ch. 60, § 15, p. 106; am. S.L. 1982, ch. 313, § 1, p. 787 was repealed by S.L. 2009, ch. 341, § 36, effective January 1, 2011..

### **Effective Dates.**

Section 10 of S.L. 2016, ch. 359 declared an emergency. Approved April 5, 2016.

## **RESEARCH REFERENCES**

**A.L.R.** — Voter Identification Requirements as Denying or Abridging Right to Vote on Account of Race or Color Under § 2 of Voting Rights Act, [52 U.S.C. § 10301. 12 A.L.R. Fed. 3d 4.](#)

**34-410. Mail registration.** — Any elector may register by mail for any election. Any mail registration application must be received by the county clerk prior to the close of registration as provided in section 34-408, Idaho Code, provided that any mail registration application postmarked not later than twenty-five (25) days prior to an election shall be deemed timely.

The secretary of state shall prescribe the form for the mail registration application. This mail application form shall be available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

Any federal mail registration form adopted pursuant to the provisions of the national voter registration act of 1993 (P.L. 103-31) shall also be accepted as a valid registration, if such form is postmarked not later than twenty-five (25) days prior to an election.

The county clerk shall prepare and issue by first class nonforwardable mail to each elector registering by mail a verification of registration containing the name and residence of the elector and the name or number of the precinct in which the elector resides.

A verification returned undeliverable shall cause the county clerk to remove the elector's card from the register of electors.

As required by the help America vote act of 2002 (P.L. 107-252), a copy of proper identification will be required prior to issuance of a ballot to anyone who has registered by mail and has not previously voted in an election for federal office in the state. Proper identification consists of: (1) A current and valid photo identification; or (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

### **History.**

I.C., § 34-410, as added by 1994, ch. 67, § 7, p. 137; am. 1995, ch. 215, § 4, p. 747; am. 2003, ch. 48, § 4, p. 181.

## **STATUTORY NOTES**

## **Cross References.**

Secretary of state, § 67-901 et seq.

## **Prior Laws.**

Former § 34-410, which comprised 1970, ch. 140, § 45, p. 351; am. 1972, ch. 392, § 3, p. 1131; am. 1982, ch. 137, § 2, p. 388; am. 1984, ch. 131, § 1, p. 305, was repealed by S.L. 1994, ch. 67, § 2, effective January 1, 1995.

Another former § 34-410 was repealed. See Prior Laws, § 34-401.

## **Federal References.**

The national voter registration act of 1993, referred to in the third paragraph, is codified as [52 U.S.C.S. § 20501 et seq.](#)

The help America vote act of 2002, referred to in the sixth paragraph, is codified as [52 U.S.C.S. § 20901 et seq.](#)

## **Compiler's Notes.**

Subdivision 5 of § 1 of S.L. 1994, ch. 67 provided that the purpose of this act was “to exempt Idaho from compliance with the National Voter Registration Act of 1993, as provided in section 4(b)(2) of that act.”

## **Effective Dates.**

Section 7 of S.L. 1984, ch. 131 declared an emergency. Approved March 31, 1984.

Section 8 of S.L. 1994, ch. 67 provided that “An emergency existing therefor, which emergency is hereby declared to exist, the provisions of Sections 1 and 5 of this act shall be in full force and effect on and after passage and approval and retroactively to March 10, 1993, and the remaining Sections of this act shall be in full force and effect on and after January 1, 1995.” Approved March 7, 1994.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

## **RESEARCH REFERENCES**

**A.L.R.** — Preemption of state election laws by [Help America Vote Act](#).  
[47 A.L.R. Fed 2d 81](#).

Idaho Code 34-410A

**34-410A. Absentee registration for uniformed and overseas citizens.**

— Whenever provision is made for absentee voting by a statute of the United States, including the “Uniformed and Overseas Citizens Absentee Voting Act” (42 U.S.C. 1973ff.), an application for an absentee ballot made under that law may be given the same effect as an application for an absentee ballot made under chapter 10, title 34, Idaho Code.

**History.**

I.C., § 34-410A, as added by 1995, ch. 215, § 6, p. 747.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-410A, which comprised I.C., § 34-410A, as added by 1976, ch. 353, § 1, p. 1166; am. 1994, ch. 122, § 1, p. 271, was repealed by S.L. 1995, ch. 215, § 5, effective March 17, 1995.

**Compiler’s Notes.**

The citation enclosed in parentheses so appeared in the law as enacted. The present citation to the federal act is 52 U.S.C.S. § 20301 et seq.

**34-411. Application for registration — Contents.** — (1) Each elector who requests registration shall supply the following information under oath or affirmation:

- (a) Full name and sex.
- (b) Mailing address, residence address or any other necessary information definitely locating the elector's residence.
- (c) The period of time preceding the date of registration during which the elector has resided in the state.
- (d) Whether or not the elector is a citizen.
- (e) That the elector is under no legal disqualifications to vote.
- (f) The county and state where the elector was previously registered, if any.
- (g) Date of birth.
- (h) Current driver's license number or identification card issued by the Idaho transportation department. In the absence of an Idaho driver's license or state issued identification card, the last four (4) digits of the elector's social security number.

(2) As provided for in [section 34-404, Idaho Code](#), each elector shall select an affiliation with a political party qualified to participate in elections pursuant to [section 34-501, Idaho Code](#), or select to be designated as "unaffiliated." The selection of party affiliation or designation as "unaffiliated" shall be maintained within the voter registration system as provided for in [section 34-437A, Idaho Code](#). If an elector shall fail or refuse to make such a selection, the county clerk shall record as "unaffiliated" such elector within the voter registration system as provided for in [section 34-437A, Idaho Code](#).

(3) Any elector who shall supply any information under subsection (1) of this section, knowing it to be false, is guilty of perjury.

(4) Each elector who requests registration may, at the elector's option, supply the elector's telephone number. If the telephone number is supplied

by the elector, the telephone number shall be available to the public.

### **History.**

1970, ch. 140, § 46, p. 351; am. 1971, ch. 192, § 6, p. 874; am. 1972, ch. 392, § 4, p. 1131; am. 1988, ch. 233, § 1, p. 461; am. 1995, ch. 215, § 7, p. 747; am. 2003, ch. 48, § 5, p. 181; am. 2011, ch. 319, § 5, p. 929; am. 2012, ch. 211, § 3, p. 571.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-411, which comprised 1963, ch. 268, § 4, p. 681, was repealed by S.L. 1970, ch. 140, § 205.

### **Amendments.**

The 2011 amendment, by ch. 319, made neutral gender changes in subsection (1); added subsection (2); and redesignated former subsections (2) and (3) as present subsections (3) and (4).

The 2012 amendment, by ch. 211, in paragraph (1)(h), inserted “identification card issued by the Idaho transportation department” and “or state issued identification card.”

### **Legislative Intent.**

Section 1 of S.L. 2011, ch. 319 provided: “Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party’s candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the **First** and **Fourteenth Amendments** to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections.”



**Effective Dates.**

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

**JUDICIAL DECISIONS****Open Primary.**

Neither the Republican party nor the Idaho secretary of state were entitled to summary judgment as to whether Idaho's open primary election statutes, § 34-904 and this section, violated the party's **First Amendment** right to freedom of association, because fact issues remained as to the effect of "cross over" voting on the party's message and its selection of candidates for office. **Idaho Republican Party v. Ysursa**, 660 F. Supp. 2d 1195 (D. Idaho 2009).

**Cited in:** **Cenarrusa v. Peterson**, 95 Idaho 395, 509 P.2d 1316 (1973).

**34-411A. Primary elections — Changing party affiliation — Unaffiliated electors.** — (1) For a primary election, including a presidential primary election, an elector may change such elector's political party affiliation or become "unaffiliated" by filing a signed form with the county clerk no later than the last day a candidate may file for partisan political office prior to such primary election, as provided for in section 34-704 or 34-732, Idaho Code. An "unaffiliated" elector may affiliate with the party of the elector's choice by filing a signed form up to and including election day. The application form described in section 34-1002, Idaho Code, shall also be used for this purpose.

(2) For a primary election, an "unaffiliated" elector may select a political party affiliation only prior to voting in the primary election. An elector may make such selection on or before election day, by declaring such political party affiliation to the poll worker or other appropriate election personnel. The poll worker or other appropriate election personnel shall then record in the poll book the elector's choice. After the primary election, the county clerk shall record the party affiliation so recorded in the poll book as part of such elector's record within the voter registration system as provided for in [section 34-437A, Idaho Code](#).

### **History.**

[I.C., § 34-411A](#), as added by 2011, ch. 319, § 6, p. 929; am. 2012, ch. 211, § 4, p. 571; am. 2020, ch. 55, § 1, p. 136.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-411A, Registration by mail when complete reregistration required, which comprised [I. C., § 34-411A](#), as added by 1971, ch. 192, § 7, p. 874, was repealed by S. L. 1973, ch. 123, § 2, p. 233.

### **Amendments.**

The 2012 amendment, by ch. 211, inserted the second sentence in subsection (1).

The 2020 amendment, by ch. 55, in the first sentence in subsection (1), inserted “including a presidential primary election” near the beginning and “or 34-732” near the end.

### **Legislative Intent.**

Section 1 of S.L. 2011, ch. 319 provided: “Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party’s candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the **First** and **Fourteenth Amendments** to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections.”

### **Effective Dates.**

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

**34-412. Qualifications for registration.** — (1) The qualifications of any person who requests to be registered shall be determined in the first instance by the registering official from the evidence before him. If the registering official determines that such person is not qualified, he shall refuse to register the person.

(2) A person refused registration under subsection (1) of this section may make application to the county clerk for a hearing on his qualifications. Not more than ten (10) days after the date he receives such application, the county clerk shall hold a hearing on the qualifications of the applicant and shall notify the applicant of the place and time of such hearing. At such hearing the applicant may present evidence as to his qualifications, provided that no hearing shall be held subsequent to any election which is held within said ten (10) day period. If the county clerk determines that the applicant is qualified, the county clerk shall register the applicant immediately upon the conclusion of the hearing.

**History.**

1970, ch. 140, § 47, p. 351; am. 1982, ch. 216, § 1, p. 590; am. 1995, ch. 215, § 8, p. 747.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 34-412 to 34-421, which comprised 1963, ch. 268, §§ 5, 6, 10 to 13, p. 681, were repealed by S.L. 1970, ch. 140, § 205.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of statute requiring proof and disclosure of information as condition of registration to vote. [48 A.L.R.6th 181](#).

**34-413. Reregistration of elector who changes residence.** — An elector who moves to another county within the state or to another state within thirty (30) days prior to any election shall be permitted to vote in the ensuing election by absentee ballot or at the polling place assigned to the elector's prior address.

**History.**

1970, ch. 140, § 48, p. 351; am. 1972, ch. 392, § 5, p. 1131; am. 1977, ch. 15, § 1, p. 32; am. 1982, ch. 137, § 3, p. 388; am. 1983, ch. 213, § 1, p. 590; am. 1995, ch. 215, § 9, p. 747; am. 2019, ch. 96, § 4, p. 344.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-413 was repealed. See Prior Laws, § 34-412.

**Amendments.**

The 2019 amendment, by ch. 96, added “or at the polling place assigned to the elector's prior address” at the end of the section.

**Effective Dates.**

Section 11 of S.L. 1983, ch. 213 declared an emergency. Approved April 13, 1983.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

**34-414. Voter's affidavit of elector who moves within a county.  
[Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

A former § 34-414, which comprised S.L. 1970, ch. 140, § 49, was repealed by S.L. 1972, ch. 392, § 6.

Another former § 34-414, which comprised S.L. 1963, ch. 268, § 7, p. 681, was repealed by S.L. 1970, ch. 140, § 205.

**Compiler's Notes.**

This section, which comprised I.C., § 34-414, as added by 1989, ch. 69, § 1, p. 110, was repealed by S.L. 1995, ch. 215, § 10, effective March 17, 1995.

**34-415. Certificates of registration. [Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

A former § 34-415, which comprised 1963, ch. 268, § 8, p. 681, was repealed by S.L. 1970, ch. 140, § 205.

**Compiler's Notes.**

This section, which comprised 1970, ch. 140, § 50, p. 351, was repealed by S.L. 1995, ch. 215, § 10, effective March 17, 1995.

**34-416. Registration applications.** — (1) The registration application shall contain the following warning:

WARNING: Any elector who supplies any information, knowing it to be false, is guilty of perjury.

(2) The elector shall read the warning set forth in subsection (1) of this section and shall sign his name in an appropriate place on the completed application.

(3) The registration application completed and signed as provided in this section constitutes the official registration application of the elector. The county clerk shall keep and file all such applications in a convenient manner in his office. Such applications shall be considered confidential and unavailable for public inspection and copying except as provided by subsection (25) of [section 74-106, Idaho Code](#).

(4) The statewide voter registration database maintained by the secretary of state's office shall constitute the register of electors.

### **History.**

1970, ch. 140, § 51, p. 351; am. 1972, ch. 392, § 7, p. 1131; am. 2001, ch. 99, § 2, p. 248; am. 2003, ch. 48, § 6, p. 181; am. 2004, ch. 163, § 2, p. 529; am. 2015, ch. 141, § 74, p. 379; am. 2016, ch. 359, § 6, p. 1052; am. 2018, ch. 78, § 2, p. 177.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-416 was repealed. See Prior Laws, § 34-412.

### **Amendments.**

The 2015 amendment, by ch. 141, substituted “74-106” for “9-340C” in subsection (3).



The 2016 amendment, by ch. 359, substituted “registration application” or “registration applications” for “registration card” or “registration cards” in the section heading and throughout the section.

The 2018 amendment, by ch. 78, deleted “constitute the register of electors and” following “Such applications” in the third sentence of subsection (3) and added subsection (4).

**Effective Dates.**

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

Section 10 of S.L. 2016, ch. 359 declared an emergency. Approved April 5, 2016.

**34-417. Changes in boundaries of precinct — Alteration of registration cards. [Repealed.]**

Repealed by S.L. 2019, ch. 96, § 5, effective March 18, 2019.

**History.**

1970, ch. 140, § 52, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

A former § 34-417 was repealed. See Prior Laws, § 34-412.

**Effective Dates.**

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

**34-418. Weekly review of new registration cards — Report to interested officials.** — Each week the county clerk shall review the registration cards of all newly registered electors for the past weekly period to determine whether they have been previously registered to vote in another state or in another county within this state. The county clerk or secretary of state, through the statewide voter registration system, shall notify the proper registration official or county clerk where the elector was previously registered so that the prior registration may be canceled. The form of such notice shall be prescribed by the secretary of state.

**History.**

1970, ch. 140, § 53, p. 351; am. 2006, ch. 70, § 2, p. 214.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-418 was repealed. See Prior Laws, § 34-412.

**Amendments.**

The 2006 amendment, by ch. 70, substituted “or secretary of state, through the statewide voter registration system, shall notify” for “shall mail a notification of registration to” and inserted “so that the prior registration may be canceled” in the second sentence, and deleted the former third sentence, which read: “This notice shall explain that the elector has appeared and registered in this county.”

**Effective Dates.**

Section 5 of S.L. 2006, ch. 70 declared an emergency. Approved March 15, 2006.

**34-419. Suspension of registration of electors who appear not to be citizens of the United States.** — The county clerk shall remove from the register of electors the official registration application of any elector who appears by the registration records in the office of the county clerk not to be a citizen of the United States and shall suspend the registration of such elector. The county clerk shall mail a written notice of such removal and suspension to the elector at his residence address indicated on the application. If the elector proves to the county clerk that he is in fact a citizen of the United States, his application shall be replaced in the register and his registration reinstated.

**History.**

1970, ch. 140, § 54, p. 351; am. 2016, ch. 359, § 7, p. 1052.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-419 was repealed. See Prior Laws, § 34-412.

**Amendments.**

The 2016 amendment, by ch. 359, substituted “registration application” for “registration card” twice in the first sentence and substituted “application” for “card” in the last sentence.

**Effective Dates.**

Section 10 of S.L. 2016, ch. 359 declared an emergency. Approved April 5, 2016.

**34-420. No elector's registration shall be canceled while serving in the armed forces — Exception.** — Except as provided in section 34-435, Idaho Code, or for registering to vote in another jurisdiction, no elector's registration shall be canceled, nor shall he be deprived of his right to vote at any election by reason of the removal of his official registration application from the register of electors, during any period that he is serving in the armed forces of the United States or of any ally of the United States.

**History.**

1970, ch. 140, § 55, p. 351; am. 1987, ch. 20, § 1, p. 27; am. 2016, ch. 359, § 8, p. 1052; am. 2019, ch. 96, § 6, p. 344.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-420 was repealed. See Prior Laws, § 34-412.

**Amendments.**

The 2016 amendment, by ch. 359, substituted “registration application” for “registration card” near the end of subsection (1).

The 2019 amendment, by ch. 96, deleted the subsection (1) designator; inserted “or for registering to vote in another jurisdiction” near the beginning of the section; and deleted former subsection (2), which read: “In order to facilitate the implementation of the provisions of subsection (1) of this section, the one hundred twenty (120) day limitation in [section 34-435, Idaho Code](#), shall be waived for the year 1987, in order to allow military registrations to be cancelled by the county clerk in calendar year 1987.”

**Effective Dates.**

Section 10 of S.L. 2016, ch. 359 declared an emergency. Approved April 5, 2016.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

**34-421. Reregistration — When required. [Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

A former § 34-421, which comprised S.L. 1963, ch. 268, § 15, p. 681, was repealed by S.L. 1970, ch. 140, § 205.

**Compiler's Notes.**

This section, which comprised 1970, ch. 140, § 56, p. 351; am. 1977, ch. 15, § 2, p. 32; am. 1981, ch. 255, § 1, p. 545, was repealed by S.L. 1995, ch. 215, § 10, effective March 17, 1995.

**34-422. Transfer of registration. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1970, ch. 140, § 57, p. 351 was repealed by S.L. 1981, ch. 255, § 2.

**34-423. Change of name — Voting. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1970, ch. 140, § 58, p. 351; am. 1981, ch. 255, § 3, p. 545, was repealed by S.L. 1995, ch. 215, § 10, effective March 17, 1995.



**34-424 — 34-430. Special registration of persons with less than six months residency. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1970, ch. 140, §§ 59 to 65, p. 351, were repealed by S.L. 1973, ch. 123, §§ 3 to 9, p. 233.

**34-431. Challenges of entries in election register.** — At the time of any election, any registered elector may challenge the entry of an elector's name as it appears in the election register. Such a challenge will be noted in the remarks column following the elector's name stating the reason, such as "died," "moved," or "incorrect address." The individual making the challenge shall sign his name following the entry.

**History.**

1970, ch. 140, § 66, p. 351.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of statute providing for purging voter registration lists of inactive voters. [51 A.L.R.6th 287](#).

**34-432. Correction of election register from challenges at election. —**

(1) No later than the ninth Friday after each election, the county clerk shall examine the election register and note the challenges as described in section 34-431, Idaho Code. The county clerk shall mail a written inquiry to the challenged elector at his mailing address as indicated on his registration card. Such inquiry shall state the nature of the challenge and provide a suitable form for reply.

(2) Within twenty (20) days from the date of mailing of the written inquiry, the elector may, in person or in writing, state that the information on his registration card is correct. Upon receipt of such a statement or request, the county clerk shall determine whether the information satisfies the challenge. If the county clerk determines that the challenge has not been satisfied, the county clerk shall schedule a hearing on the challenge and shall notify the elector of the place and time of the hearing. The hearing shall be held no later than twenty (20) days after notice is given. At the hearing, the challenged elector may present evidence of qualification. If the county clerk, upon the conclusion of the hearing, determines that the challenged elector's registration is not valid, the county clerk shall cancel the registration. If a challenged elector fails to make the statement or request in response to the inquiry, the county clerk shall cancel the registration.

(3) The county clerk may make inquiry into the validity of any registration at any time. The inquiry shall proceed as provided in this section.

**History.**

1970, ch. 140, § 67, p. 351; am. 1982, ch. 137, § 4, p. 388; am. 1989, ch. 146, § 1, p. 353; am. 2006, ch. 70, § 3, p. 214; am. 2019, ch. 96, § 7, p. 344.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 70, deleted “or he may request a change in the information on his registration card” at the end of first sentence in

subsection (2).

The 2019 amendment, by ch. 96, substituted “No later than the ninth Friday” for “Within sixty (60) days” at the beginning of subsection (1).

**Effective Dates.**

Section 5 of S.L. 2006, ch. 70 declared an emergency. Approved March 15, 2006.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of statute providing for purging voter registration lists of inactive voters. [51 A.L.R.6th 287](#).

**34-433. Monthly correction of election register from reported deaths.**

— The state board of health [and welfare] shall, on or about the 25th day of each month, furnish to the secretary of state a listing showing the name, age, county of residence and residence address of each Idaho resident who has died during the preceding month. The secretary of state shall sort this list by county and furnish a copy of same to each county clerk. Each county clerk shall immediately cancel all registrations of individuals reported as deceased by the state board of health [and welfare] in the board's report to the secretary of state.

**History.**

1970, ch. 140, § 68, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

The bracketed insertions in the first and last sentences were added by the compiler to reflect the correct name of the referenced agency. See § 56-1005.

**34-434. Retention of notices and correspondence relating to correction of election registers.** — Copies of all notices and other correspondence issued pursuant to the directives contained in sections 67 and 68 of this act [34-432, 34-433, Idaho Code,] shall be retained by the county clerk for a period of two (2) years from date of mailing.

**History.**

1970, ch. 140, § 69, p. 351.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to explain the references in the enacted text.

**34-435. Cancellation of registrations following any general election of those not voting for four years.** — Within one hundred twenty (120) days following the date of the general election, the county clerk shall examine the election register and the signed statements of challenge made at that election. After this examination, the county clerk shall immediately cancel the registration of any elector who did not vote at any election in the past four (4) years.

This section shall be construed as to provide for a uniform four (4) year registration period for all electors.

**History.**

1970, ch. 140, § 70, p. 351; am. 1975, ch. 124, § 1, p. 257; am. 1977, ch. 15, § 3, p. 32; am. 1978, ch. 27, § 1, p. 53; am. 1995, ch. 215, § 11, p. 747; am. 2015, ch. 282, § 2, p. 1147.

**STATUTORY NOTES**

**Amendments.**

The 2015 amendment, by ch. 282, in the first paragraph, deleted “in 1978 and every general election thereafter” following “general election” in the first sentence and deleted “primary or general” preceding “election” in the last sentence.

**Effective Dates.**

Section 16 of S.L. 1995, ch. 215 declared an emergency. Approved March 17, 1995.

Section 9 of S.L. 2015, ch. 282 declared an emergency. Approved April 6, 2015.

**34-436. Retention of correspondence relating to cancellation of voter's registration.** — All correspondence relating to the cancellation of an elector's registration shall be preserved by the county clerk for a period of two (2) years following the time of any general election.

**History.**

1970, ch. 140, § 71, p. 351.



**34-437. Furnishing lists of registered electors — Restrictions. — (1)**

Each of the county clerks, upon receiving a request shall supply to any individual, a current list of the registered electors of the county and their addresses, arranged in groups according to election precincts. The county clerks shall prepare an original of the above list from the state voter registration system at county expense. Any person desiring a copy of the original list shall be furnished the same, and the county clerk shall assess the individual an amount which will compensate the county for the cost of reproducing such copy.

(2) No person to whom a list of registered electors is made available or supplied under subsection (1) of this section and no person who acquires a list of registered electors prepared from such list shall use any information contained therein for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however, that any such list and label may be used for any political purpose.

**History.**

1970, ch. 140, § 72, p. 351; am. 1972, ch. 392, § 8, p. 1131; am. 1973, ch. 304, § 5, p. 646; am. 1976, ch. 344, § 1, p. 1147; am. 1982, ch. 137, § 5, p. 388; am. 2003, ch. 48, § 7, p. 181.

**STATUTORY NOTES**

**Effective Dates.**

Section 9 of S.L. 1972, ch. 392 declared an emergency. Approved April 3, 1972.

Section 7 of S.L. 1982, ch. 137 declared an emergency. Approved March 22, 1982.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

**34-437A. Statewide list of registered electors.** — (1) The secretary of state, in conjunction with county clerks, shall develop and implement a single, uniform official, centralized, interactive, computerized statewide voter registration system as required by the help America vote act of 2002 (P.L. 107-252).

(2) The statewide system shall contain the name and registration information of every legally registered voter in the state and assign a unique identifier to each legally registered voter in the state, and include the following:

- (a) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state.
- (b) The computerized list shall contain the name and registration information of every legally registered voter in the state.
- (c) Under the computerized list, a unique identifier shall be assigned to each legally registered voter in the state.
- (d) The computerized list shall be coordinated with other agency databases within the state.
- (e) Any election official in the state, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.
- (f) All voter registration information obtained by any local election official in the state shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.
- (g) The secretary of state shall provide such support as may be required so that local election officials are able to enter information as described in subsection (2)(f) of this section.
- (h) The computerized list shall serve as the official voter registration list for the conduct of all elections for federal office in the state.

(3) Any person desiring a copy of the statewide list of registered electors shall be furnished the same, and the secretary of state shall assess the individual an amount which will compensate the state for the cost of reproducing such copy.

No person to whom a list of statewide electors is furnished and no person who acquires a list of statewide electors prepared from such list shall use any information contained therein for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however, that any such list and label may be used for any political purpose.

**History.**

[I.C., § 34-437A](#), as added by 1976, ch. 344, § 2, p. 1147; am. 2003, ch. 48, § 8, p. 181.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Federal References.**

The help America vote act of 2002, referred to in subsection (1), is codified as [52 U.S.C.S. § 20901 et seq.](#)

**Effective Dates.**

Although the governor signed S.L. 1976, chapter 344 on April 1, 1976, the attorney general ruled that this bill became law without the governor's signature on March 31, 1976.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

**RESEARCH REFERENCES**

**A.L.R.** — Preemption of state election laws by [Help America Vote Act](#). [47 A.L.R. Fed 2d 81](#).

**34-437B. Furnishing lists of registered electors to school districts. —**

Each of the county clerks, upon receiving a request therefor, not later than the thirtieth day prior to a school election, shall, not later than the seventh day prior to the election, supply to a requesting school board a list of registered electors, that are within the school district within which a school district election is to be held. The county clerk may assess the school board an amount which will compensate the county for the cost of preparing such a list.

**History.**

**I.C., § 34-437B**, as added by 1987, ch. 256, § 3, p. 519; am. 1988, ch. 71, § 1, p. 101; am. 2006, ch. 70, § 4, p. 214.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 70, deleted “by precinct” following “registered electors.”

**Effective Dates.**

Section 5 of S.L. 1987, ch. 256 (approved April 1, 1987 at 9:45 AM) declared an emergency. However, such section was repealed by § 1 of S.L. 1987, ch. 252 (approved and effective April 1, 1987 at 2:50 PM).

Section 2 of S.L. 1988, ch. 71 declared an emergency. Approved March 22, 1988.

Section 5 of S.L. 2006, ch. 70 declared an emergency. Approved March 15, 2006.

**34-438. Data-processing systems — Use for voter registration.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1970, ch. 140, § 73, p. 351, was repealed by S.L. 2003, ch. 48, § 9, effective March 13, 2003.

**34-439. Disclosures in elections to authorize bonded indebtedness. —**

(1) Notwithstanding any other provision of law, any taxing district that proposes to submit any question to the electors of the district that would authorize any bonded indebtedness shall provide a brief official statement setting forth in simple, understandable language information on the proposal substantially as follows:

(a) The purpose for which the bonds are to be used including, but not necessarily limited to, a description of the facility and/or project that will be financed, in whole or in part, by the sale of the bonds; the date of the election; and the principal amount of the bonds to be issued;

(b) The anticipated interest rate on the proposed bonds based upon current market rates and a maximum interest rate if a maximum is specified in the question to be submitted to electors;

(c) The total amount to be repaid over the life of the bonds based on the anticipated interest. Such total shall reflect three (3) components: a total of the principal to be repaid; a total of the interest to be paid; and the sum of both;

(d) The estimated average annual cost to the taxpayer of the proposed bond, in the format of “A tax of \$ per \$100,000 of taxable assessed value, per year, based on current conditions”;

(e) The length of time, reflected in months or years, in which the proposed bonds will be paid off or retired; and

(f) The total existing indebtedness, including interest accrued, of the taxing district.

(2)(a) The formula for calculating the estimated average annual cost to the taxpayer shall be as follows:

$$((\text{Bond Total}/\text{Taxable Value}) \times 100,000)/\text{Duration} = \text{estimated average annual cost to taxpayer}; \text{ and}$$

(b) The elements of which are defined as:

(i) “Bond total” means the total amount to be bonded, from subsection (1)(c) of this section as based on the anticipated interest rate in subsection (1)(b) of this section;

(ii) “Duration” means the time, in years, from subsection (1)(e) of this section; and

(iii) “Taxable value” means the most recent total taxable value for property for the applicable taxing district, which shall be obtained from the applicable county treasurer or assessor’s office.

(3) The official statement shall be made a part of the ballot prior to the location on the ballot where a person casts a vote and shall be included in the official notice of the election.

### **History.**

**I.C., § 34-439**, as added by 2012, ch. 200, § 2, p. 535; am. 2015, ch. 286, § 1, p. 1158; am. 2018, ch. 261, § 1, p. 618.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-439, Disclosures in elections to authorize bonded indebtedness, which comprised **I.C., § 34-440**, as added by 1983, ch. 103, § 1, p. 222; am. 1984, ch. 107, § 1, p. 249; am. 1987, ch. 19, § 1, p. 26; am. and redesign. 2005, ch. 25, § 58, p. 82, was repealed by S.L. 2012, ch. 200, § 1, effective April 3, 2012.

### **Amendments.**

The 2015 amendment, by ch. 286, inserted “prior to the location on the ballot where a person casts a vote” in subsection (2).

The 2018 amendment, by ch. 261, inserted present paragraph (1)(d) and redesignated the subsequent paragraphs accordingly and inserted present subsection (2) and redesignated former subsection (2) as subsection (3).

### **Effective Dates.**

Section 3 of S.L. 2012, ch. 200 declared an emergency. Approved April 3, 2012.

**34-439A. Disclosures in elections to authorize levy.** — (1) Notwithstanding any other provision of law except for the provisions of section 63-802(1)(g) [(1)(h)], Idaho Code, any taxing district that proposes to submit any question to the electors of the district that would authorize any levy, except for the levies authorized for the purposes provided in sections 63-802(1)(g) [(1)(h)] and 33-802(4), Idaho Code, and except for levies relating to bonded indebtedness where section 34-439, Idaho Code, applies, shall include in the ballot question, or in a brief official statement on the ballot but separate from the ballot question, a disclosure setting forth in simple, understandable language information on the proposal substantially as follows:

(a) The purpose for which the levy shall be used; the date of the election; and the dollar amount estimated to be collected each year from the levy;

(b) The estimated average annual cost to the taxpayer of the proposed levy, in the form of “A tax of \$ per one hundred thousand dollars (\$100,000) of taxable assessed value, per year, based on current conditions.” The dollar amount shall be calculated by multiplying the expected levy rate by one hundred thousand dollars (\$100,000); and

(c) The length of time, reflected in months or years, in which the proposed levy will be assessed.

(2) The information called for in subsection (1) of this section shall be placed prior to the location on the ballot where a person casts a vote and shall also be included in like manner in the official notice of the election.

### **History.**

I.C., § 34-439A, as added by 2012, ch. 212, § 1, p. 580; am. 2015, ch. 282, § 3, p. 1147; am. 2015, ch. 286, § 2, p. 1158; am. 2016, ch. 47, § 18, p. 98; am. 2019, ch. 86, § 1, p. 212.

## **STATUTORY NOTES**

### **Amendments.**



This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 282, rewrote the section to the extent that a detailed comparison is impracticable.

The 2015 amendment, by ch. 286, inserted “prior to the location on the ballot where a person casts a vote” in subsection (2).

The 2016 amendment, by ch. 47, in subsection (2), substituted “section shall be placed” for “section shall” and inserted “and shall” following “casts a vote”.

The 2019 amendment, by ch. 86, in subsection (1), added present paragraph (b) and redesignated former paragraph (b) as paragraph (c).

**Compiler’s Notes.**

The bracketed insertions in the introductory paragraph in subsection (1) were added by the compiler to account for the 2017 amendment at § 63-802.

**Effective Dates.**

Section 9 of S.L. 2015, ch. 282 declared an emergency. Approved April 6, 2015.



## **CHAPTER 5**

### **POLITICAL PARTIES — ORGANIZATION**

#### **Section.**

34-501. “Political party” defined — Procedures for creation of a political party.

34-502. County central committee — Members — Officers — Duties of chairman — Notice to chairman.

34-503. Legislative district central committee — Membership — Officers.

34-504. State central committee — Membership.

34-504A. Challengers and poll watchers. [Repealed.]

34-505. Powers and duties of county central committee.

34-506. Powers and duties of legislative district central committee.

34-507. Selection of delegates to the state convention.

**34-501. “Political party” defined — Procedures for creation of a political party.** — (1) A “political party” within the meaning of this act, is an organization of electors under a given name. A political party shall be deemed created and qualified to participate in elections in any of the following three (3) ways:

(a) By having three (3) or more candidates for state or national office listed under the party name at the last general election, provided that those individuals seeking the office of president, vice president and president elector shall be considered one candidate, or

(b) By polling at the last general election for any one of its candidates for state or national office at least three per cent (3%) of the aggregate vote cast for governor or for presidential electors.

(c) By an affiliation of electors who shall have signed a petition which shall:

(A) State the name of the proposed party in not more than six (6) words;

(B) State that the subscribers thereto desire to place the proposed party on the ballot;

(C) Have attached thereto a sheet or sheets containing the signatures of at least a number of qualified electors equal to two per cent (2%) of the aggregate vote cast for presidential electors in the state at the previous general election at which presidential electors were chosen;

(D) Be filed with the secretary of state on or before August 30 of even numbered years;

(E) The format of the signature petition sheets shall be prescribed by the secretary of state and shall be patterned after, but not limited to, such sheets as used for state initiative and referendum measures;

(F) The petitions and signatures so submitted shall be verified in the manner prescribed in [section 34-1807, Idaho Code](#).

(G) The petition shall be circulated no earlier than August 30 of the year preceding the general election.

(2) Upon certification by the secretary of state that the petition has met the requirements of this act such party shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

The newly certified party shall proceed to hold a state convention in the manner provided by law; provided, that at the initial convention of any such political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nominations of candidates. Thereafter the conduct of any subsequent convention shall be as provided by law.

### **History.**

**I.C., § 34-501**, as added by 1978, ch. 256, § 2, p. 560; am. 1985, ch. 42, § 1, p. 87; am. 1987, ch. 262, § 1, p. 553.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

The following former sections were repealed by S.L. 1970, ch. 140, § 206, p. 351:

34-501. (1890-1891, p. 57, § 37; reen. 1899, p. 33, § 28; reen. R.C. & C.L., § 364; C.S., § 509; I.C.A., § 33-501.)

34-502. (1890-1891, p. 57, § 38; reen. 1899, p. 33, § 29; reen. R.C., § 365; am. 1911, ch. 178, § 11, p. 581; am. 1913, ch. 85, § 16, p. 359; reen. C.L., § 365; C.S., § 510; I.C.A., § 33-502; am. 1966 (3rd E.S.), ch. 5, § 1, p. 16.)

34-503. (1890-1891, p. 57, § 51; reen. 1899, p. 33, §§ 42, 43; am. 1905, p. 317, § 1; compiled and reen. R.C. & C.L., § 366; C.S., § 511; I.C.A., § 33-503; am. 1944 (1st E.S.), ch. 2, § 1, p. 4; am. 1949, ch. 86, § 1, p. 149; am. 1951, ch. 113, § 1, p. 264; am. 1966 (3rd E.S.), ch. 5, § 2, p. 16.)

34-504. (1890-1891, p. 57, §§ 49, 50; reen. 1899, p. 33, §§ 40, 41; reen. R.C., § 367; am. 1913, ch. 24, p. 93; compiled and reen. C.L., § 367; C.S., § 512; I.C.A., § 33-504; am. 1944 (1st E.S.), ch. 2, § 2, p. 4; am. 1951, ch. 77, § 1, p. 145; am. 1953, ch. 233, § 1, p. 348; am. 1957, ch. 219, § 1, p. 497; am. 1963, ch. 358, § 1, p. 1026; am. 1966 (3rd E.S.), ch. 5, § 3, p. 16.)

34-504A. (I.C., § 34-504A, as added by 1966 (3rd E.S.), ch. 5, § 4, p. 16.)

34-505. (1890-1891, p. 57, §§ 71, 72; reen. 1899, p. 33, §§ 62, 63; am. R.C., § 368; am. 1913, ch. 24, p. 93; reen. C.L., § 368; C.S., § 513; I.C.A., § 33-505.)

34-506. (1890-1891, p. 57, § 76; reen. 1899, p. 33, § 67; am. R.C., § 369; am. 1913, ch. 24, p. 93; reen. C.L., § 369; C.S., § 514; I.C.A., § 33-506.)

34-507. (1890-1891, p. 57, § 66; reen. 1899, p. 33, § 57; reen. R.C. & C.L., § 370; C.S., § 515; I.C.A., § 33-507; am. 1933, ch. 10, § 1, p. 12; am. 1937, ch. 29, § 1, p. 41; am. 1949, ch. 131, § 1, p. 234; am. 1957, ch. 219, § 1, p. 497; am. 1959, ch. 126, § 1, p. 271.)

Another former § 34-501, which comprised S.L. 1970, ch. 140, § 74, p. 351; am. 1971, ch. 130, § 1, p. 511; am. 1976, ch. 344, § 3, p. 1147, was repealed by S.L. 1978, ch. 256, § 1.

### **Compiler's Notes.**

The term “this act” in the introductory paragraph in (1) and in the first paragraph of (2) appears in S.L. 1978, Chapter 256, which is codified as this section only.

### **Effective Dates.**

Section 7 of S.L. 1985, ch. 42 declared an emergency. Approved March 11, 1985.

## **JUDICIAL DECISIONS**

**Cited in:** [Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 \(1975\).](#)

Decisions Under Prior Law

### **Constitutionality.**

Former section defining “political parties” was unconstitutional insofar as it had the effect of prohibiting the formation of new parties and, thereby, interfered with the exercise of suffrage by citizens belonging to new parties, in violation of Idaho Const., Art. I, § 19. *American Indep. Party in Idaho, Inc. v. Cenarrusa*, 92 Idaho 356, 442 P.2d 766 (1968).

## RESEARCH REFERENCES

**A.L.R.** — Validity, construction, and application of state statutes governing “minor political parties”. 120 A.L.R.5th 1.

**34-502. County central committee — Members — Officers — Duties of chairman — Notice to chairman.** — The county central committee of each political party in each county shall consist of the precinct committeemen representing the precincts within the county and the county chairman elected by the precinct committeemen. The precinct committeemen within each county shall meet at the county seat within ten (10) days after the primary election and at the time and date designated by the incumbent county chairman, and shall organize by electing a chairman, vice chairman, a secretary, a state committeeman, a state committeewoman, and such other officers as they may desire who shall hold office at the pleasure of the county central committee or until their successors are elected.

Unless state party rules, adopted as provided in [section 34-505, Idaho Code](#), provide otherwise, when a vacancy exists in the office of county central committee chairman, it shall be the duty of the state central committee chairman to call a meeting of the precinct committeemen of the county, and the precinct committeemen shall proceed to elect a chairman of the county central committee for the balance of the unexpired term.

The county central committee shall fill by appointment all vacancies that occur or exist in the office of precinct committeeman who shall be a qualified elector of the precinct.

The county clerk shall deliver in writing to the chairman of the county central committee of each political party on or before January 20 of each year in which a general election is to be held, a list of the election precincts in the county and the names and addresses of the precinct committeemen who were elected at the last primary election, or who have since been appointed as precinct committeemen, as such election or appointment is shown on the records of the county clerk. If the county clerk has no record of precinct committeemen, he shall in writing, so inform the chairman of the county central committee.

The chairman of the county central committee shall on or before February 1 of each year in which a general election is to be held, and at



such other times as changes occur, certify to the county clerk the names and addresses of the precinct committeemen of his political party.

**History.**

1970, ch. 140, § 75, p. 351; am. 1975, ch. 21, § 2, p. 30; am. 1976, ch. 351, § 1, p. 1160; am. 2011, ch. 285, § 4, p. 778.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-502 was repealed. See Prior Laws, § 34-501.

**Amendments.**

The 2011 amendment, by ch. 285, deleted the former last sentence, which read: “Immediately upon receipt of certification, the county clerk shall deliver in writing to each precinct committeeman a notice of the provisions of subsection (1) of [section 34-406, Idaho Code](#).”

**Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

**JUDICIAL DECISIONS**

**Cited in:** [Marchioro v. Chaney, 442 U.S. 191, 99 S. Ct. 2243, 60 L. Ed. 2d 816 \(1979\).](#)

**34-503. Legislative district central committee — Membership — Officers.** — The legislative district central committee of each political party in each legislative district shall consist of the precinct committeemen representing the precincts within the legislative district, and the legislative district chairman elected by the precinct committeemen. The precinct committeemen within each legislative district shall meet within the legislative district or at a convenient location in a legislative district contiguous to the legislative district, or at a convenient location in a county in which any portion of the legislative district sits, within eleven (11) days after the primary election, the meeting time and place to be designated by the incumbent legislative district chairman. At this meeting the precinct committeemen shall organize by electing a chairman, vice chairman, a secretary and such other officers as they may desire, who shall hold office at the pleasure of the legislative district central committee or until their successors are elected.

Unless state party rules, adopted as provided in [section 34-506, Idaho Code](#), provide otherwise, when a vacancy exists in the office of legislative district central committee chairman, it shall be the duty of the state central committee chairman to call a meeting of the precinct committeemen of the legislative district, and the precinct committeemen shall proceed to elect a chairman of the legislative district central committee for the balance of the unexpired term.

**History.**

1970, ch. 140, § 76, p. 351; am. 1976, ch. 351, § 2, p. 1160; am. 2006, ch. 397, § 1, p. 1222.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-503 was repealed. See Prior Laws, § 34-501.

**Amendments.**

The 2006 amendment, by ch. 397, in the first paragraph, inserted “or at a convenient location in a legislative district contiguous to the legislative district, or at a convenient location in a county in which any portion of the legislative district sits.”

**Effective Dates.**

Although the governor signed S.L. 1976, chapter 344 on April 1, 1976, the attorney general ruled that this bill became law without the governor’s signature on March 31, 1976.

Section 2 of S.L. 2006, ch. 397 declared an emergency. Approved April 7, 2006.

**34-504. State central committee — Membership.** — The state central committee of each political party shall consist of all legislative district chairmen, all county central committee chairmen, all state committeemen, and state committeewomen selected by the county central committees. Each of the above members of the state central committee shall be entitled to vote at all meetings of the state central committee.

**History.**

1970, ch. 140, § 77, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-504 was repealed. See Prior Laws, § 34-501.

**JUDICIAL DECISIONS**

**Cited in:** *Marchioro v. Chaney*, 442 U.S. 191, 99 S. Ct. 2243, 60 L. Ed. 2d 816 (1979).

**34-504A. Challengers and poll watchers. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 34-504A**, as added by 1966 (3rd E.S.), ch. 5, § 4, p. 16, was repealed by S.L. 1970, ch. 140, § 206, p. 351.

**34-505. Powers and duties of county central committee.** — The county central committee shall have all the powers and duties prescribed by state law and rules and regulations promulgated and adopted by the state conventions or the state central committee.

**History.**

1970, ch. 140, § 78, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-505 was repealed. See Prior Laws, § 34-501.

**34-506. Powers and duties of legislative district central committee. —**

The legislative district central committee shall have all the powers and duties prescribed by state law and rules and regulations promulgated and adopted by the state conventions or the state central committee.

**History.**

1970, ch. 140, § 79, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-506 was repealed. See Prior Laws, § 34-501.

**34-507. Selection of delegates to the state convention.** — The delegates to the state convention of each political party shall be selected in the manner prescribed by rules and regulations promulgated and adopted by the state central committee.

**History.**

I.C., § 34-507, as added by 1971 (E.S.), ch. 9, § 2, p. 14.

**STATUTORY NOTES**

**Prior Laws.**

A former § 34-507 was repealed by S.L. 1970, ch. 140, § 206 (see Prior Laws, § 34-501); section 80 of that act created a new § 34-507. This subsequent section, which comprised S.L. 1970, ch. 140, § 80; 1971, ch. 148, § 1, was repealed by S.L. 1971 (E.S.), ch. 9, § 1.





## **CHAPTER 6**

### **TIME OF ELECTIONS — OFFICERS ELECTED**

#### **Section.**

34-601. Dates on which elections shall be held.

34-602. Publication of notices for primary, general or special elections — Contents.

34-603. Certification of a proposed constitution, constitutional amendment or other question to be submitted to the people for vote.

34-604. Election of United States senator — Qualifications.

34-605. Election of United States congressional representatives — Qualifications.

34-606. Election of presidential electors.

34-607. Election of governor — Qualifications.

34-608. Election of lieutenant governor — Qualifications.

34-609. Election of secretary of state — Qualifications.

34-610. Election of state controller — Qualifications.

34-611. Election of state treasurer — Qualifications.

34-612. Election of attorney general — Qualifications.

34-612A — 34-612D. Certification of candidates — State, county assemblies — Independent candidates — Unendorsed political party candidates. [Repealed.]

34-613. Election of superintendent of public instruction — Qualifications.

34-614. Election of state representatives and senators — Qualifications.

34-614A. Candidates for state legislature.

34-615. Election — Selection — Of justices of the supreme court — Qualifications.

34-616. Election — Selection — Of district judges — Qualifications.

- 34-617. Election of county commissioners — Qualifications.
- 34-618. Election of county sheriffs — Qualifications.
- 34-619. Election of clerks of district courts — Qualifications.
- 34-620. Election of county treasurers — Qualifications.
- 34-621. Election of county assessors — Qualifications.
- 34-622. Election of county coroners — Qualifications.
- 34-623. Election of county prosecuting attorneys — Qualifications.
- 34-624. Election of precinct committeemen — Qualifications.
- 34-624A. Alternative to precinct committeeman — Precinct committeeman and voters' delegate to the party's county and district conventions.
- 34-625. Election of highway district commissioners in single countywide districts — Qualifications.
- 34-625A. Election of highway district commissioners in certain single countywide districts — Qualifications.
- 34-626. Petition in lieu of filing fee.
- 34-627. Holders of partisan elective office changing political parties.
- 34-627A — 34-651. [Repealed.]

**34-601. Dates on which elections shall be held.** — Elections shall be held in this state on the following dates or times:

(1) A primary election shall be held on the third Tuesday in May, 2012, and every two (2) years thereafter on the above-mentioned Tuesday.

(2) A general election shall be held on the first Tuesday after the first Monday of November, 2012, and every two (2) years thereafter on the above-mentioned Tuesday.

(3) Special state elections shall be held on the dates ordered by the governor's proclamation, or as otherwise provided by law.

(4) A presidential primary shall be held on the second Tuesday in March in each presidential election year.

**History.**

1970, ch. 140, § 81, p. 351; am. 1971, ch. 193, § 1, p. 879; am. 1975, ch. 174, § 12, p. 469; am. 1979, ch. 309, § 2, p. 833; am. 2009, ch. 341, § 57, p. 993; am. 2012, ch. 33, § 2, p. 103; am. 2015, ch. 292, § 4, p. 1166.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-601, which comprised 1931, ch. 18, § 1, p. 29; I.C.A., § 33-601, was repealed by S.L. 1970, ch. 140, § 207.

**Amendments.**

The 2009 amendment, by ch. 341, in subsections (1) and (4), substituted “third Tuesday in May, 2012” for “fourth Tuesday in May, 1980”; and, in subsection (2), substituted “November, 2012” for “November, 1972.”

The 2012 amendment, by ch. 34, deleted former subsection (4), which read: “A presidential primary shall be held in conjunction with the primary election, on the third Tuesday in May, 2012, and every four (4) years thereafter on the above-mentioned Tuesday.”

The 2015 amendment, by ch. 292, added subsection (4).

## **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 15 of S.L. 2012, ch. 33 declared an emergency. Approved March 1, 2012.

## **JUDICIAL DECISIONS**

**Cited in:** Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

Decisions Under Prior Law

Analysis

Filling of vacancies.

Eligibility.

### **Filling of Vacancies.**

It is the general policy of the law that vacancies in elective offices should be filled at an election as quickly as practicable after the vacancy occurs. Winter v. Davis, 65 Idaho 696, 152 P.2d 249 (1944).

### **Eligibility.**

One ineligible for office at the time of election because of holding another office, the term of which will expire before the beginning of the term of the office for which he is a candidate, was not by his tenure of the office he holds rendered ineligible to be a candidate for the office he seeks. Jordan v. Pearce, 91 Idaho 687, 429 P.2d 419 (1967).

**34-602. Publication of notices for primary, general or special elections — Contents.** — The several county clerks shall publish at least two (2) times, the notices for any primary, general or special election. The notice shall state the date of the election, the polling place in each precinct and the hours during which the polls shall be open for the purpose of voting, and information about the accessibility of the polling places.

The first notice shall be published at least twelve (12) days prior to any election and the second notice shall be published not later than five (5) days prior to the election. The notice of election shall be published in at least two (2) newspapers published within the county, but if this is not possible, the notice shall be published in one (1) newspaper published within the county or a newspaper which has general circulation within the county.

The second notice of election shall be accompanied by a facsimile, except as to size, of the sample ballot for the election.

**History.**

1970, ch. 140, § 82, p. 351; am. 2004, ch. 112, § 1, p. 385; am. 2009, ch. 341, § 58, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former, § 34-602, which comprised 1931, ch. 18, § 2, p. 29; I.C.A., § 33-602, was repealed by S.L. 1970, ch. 140, § 207.

**Amendments.**

The 2009 amendment, by ch. 341, added the last paragraph.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**34-603. Certification of a proposed constitution, constitutional amendment or other question to be submitted to the people for vote. —**

Whenever a proposed constitution, constitutional amendment or other question is to be submitted to the people of the state for popular vote, it shall be certified by the secretary of state to the county clerks not later than September 7 in the year in which it will be voted upon. It shall be published in the form prescribed by the secretary of state.

**History.**

1970, ch. 140, § 83, p. 351; am. 1973, ch. 304, § 6, p. 646; am. 1984, ch. 131, § 2, p. 305; am. 1985, ch. 42, § 2, p. 87.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-603, which comprised I.C.A., § 33-602-A, as added by 1933, ch. 185, § 12, p. 341, was repealed by S.L. 1963, ch. 93, § 11, p. 291.

**Effective Dates.**

Section 7 of S.L. 1984, ch. 131 declared an emergency. Approved March 31, 1984.

Section 7 of S.L. 1985, ch. 42 declared an emergency. Approved March 11, 1985.

**34-604. Election of United States senator — Qualifications.** — (1) At the general election, 1972, and every six (6) years thereafter, there shall be elected one (1) United States senator. At the general election, 1974, and every six (6) years thereafter, there shall be elected one (1) United States senator.

(2) No person shall be elected to the office of United States senator unless he has attained the age of thirty (30) years at the time of his election, has been a citizen of the United States at least nine (9) years and shall reside within the state at the time of his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of five hundred dollars (\$500) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 84, p. 351; am. 1996, ch. 28, § 1, p. 67.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

The following former sections were repealed by S.L. 1970, ch. 140, § 207:

34-604. (1931, ch. 18, § 3, p. 29; I.C.A., § 33-603; am. 1933, ch. 185, § 1, p. 341; am. 1944 (1st E.S.), ch. 2, § 3, p. 4; am. 1947, ch. 5, § 1, p. 7; am. 1959, ch. 146, § 1, p. 331; am. 1963, ch. 93, § 1, p. 291.)

34-605. (1931, ch. 18, § 4, p. 29; I.C.A., § 33-604; am. 1965 (E.S.), ch. 1, § 1, p. 5; am. 1966 (3rd E.S.), ch. 5, § 5, p. 16.)



34-606. (1931, ch. 18, § 5, p. 29; I.C.A., § 33-605; am. 1933, ch. 185, § 2, p. 341; am. 1937, ch. 42, § 1, p. 53; am. 1944 (1st E.S.), ch. 2, § 4, p. 4; am. 1949, ch. 86, § 4, p. 149; am. 1953, ch. 196, § 1, p. 304; am. 1955, ch. 242, § 1, p. 542; am. 1959, ch. 146, § 2, p. 331; am. 1963, ch. 93, § 2, p. 291; am. 1965, ch. 261, § 1, p. 660; am. 1965, (E.S.), ch. 1, § 2, p. 5; am. 1966 (3rd E.S.), ch. 5, § 6, p. 16; am. 1967, ch. 360, § 1, p. 1011.)

34-607. (1931, ch. 18, § 6, p. 29; I.C.A., § 33-606; am. 1935, ch. 123, § 1, p. 287; am. 1959, ch. 125, § 1, p. 270.)

34-608. (1931, ch. 18, § 7, p. 29; I.C.A., § 33-607; am. 1933, ch. 185, § 3, p. 341; am. 1937, ch. 42, § 2, p. 53; am. 1965 (E.S.), ch. 1, § 3, p. 5; am. 1966 (3rd E.S.), ch. 5, § 7, p. 16.)

34-609. (1931, ch. 18, § 8, p. 29; I.C.A., § 33-608; am. 1966 (3rd E.S.), ch. 5, § 8, p. 16.)

34-610. (1931, ch. 18, § 9, p. 29; I.C.A., § 33-609; am. 1963, ch. 93, § 3, p. 291.)

34-611. (1931, ch. 18, § 10, p. 29; I.C.A., § 33-610; am. 1963, ch. 93, § 4, p. 291.)

34-612. (1931, ch. 18, § 11, p. 29; I.C.A., § 33-611; am. 1933, ch. 185, § 4, p. 341; am. 1937, ch. 54, § 1, p. 69; am. 1951, ch. 253, § 1, p. 550; am. 1959, ch. 146, § 3, p. 331; am. 1963, ch. 93, § 5, p. 291; am. 1966 (3rd E.S.), ch. 5, § 9, p. 16; am. 1967, ch. 360, § 2, p. 1011.)

34-613. (1931, ch. 18, § 12, p. 29; I.C.A., § 33-612.)

34-614. (1931, ch. 18, § 13, p. 29; I.C.A., § 33-613; am. 1939, ch. 104, § 1, p. 172.)

**34-605. Election of United States congressional representatives — Qualifications.** — (1) At the general election, 1972, and every alternate year thereafter, there shall be elected in each United States congressional district a member of the United States house of representatives and any additional number of representatives to which the state may be entitled in the state at large.

(2) No person shall be elected to the house of representatives unless he has attained the age of twenty-five (25) years at the time of his election, has been a citizen of the United States at least seven (7) years and shall reside within the state at the time of his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of three hundred dollars (\$300) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 85, p. 351; am. 1983, ch. 213, § 2, p. 590; am. 1996, ch. 28, § 2, p. 67.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-605 was repealed. See Prior Laws, § 34-604.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

Construction and application of vacancies in House of Representatives Clause of United States Constitution, [U.S. Const. Art. I, § 2, cl. 4](#), and state provisions concerning such elections. [62 A.L.R.6th 143](#).

**34-606. Election of presidential electors.** — (1) At the general election, 1972, and every four (4) years thereafter, there shall be elected such a number of electors of president and vice president of the United States as the state may be entitled to in the electoral college.

(2) No person shall be elected to this position unless he has attained the age of twenty-one (21) years at the time of the election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Such electors shall be certified to the secretary of state as provided for by law.

**History.**

1970, ch. 140, § 86, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-606 was repealed. See Prior Laws, § 34-604.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-607. Election of governor — Qualifications.** — (1) At the general election, 1974, and every four (4) years thereafter, a governor shall be elected.

(2) No person shall be elected to the office of governor unless he shall have attained the age of thirty (30) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of three hundred dollars (\$300) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 87, p. 351; am. 1996, ch. 28, § 3, p. 67.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-607 was repealed. See Prior Laws, § 34-604.

**JUDICIAL DECISIONS**

**Cited in:** [Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 \(1982\).](#)

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048.](#)

**34-608. Election of lieutenant governor — Qualifications.** — (1) At the general election, 1974, and every four (4) years thereafter, there shall be elected a lieutenant governor.

(2) No person shall be elected to the office of lieutenant governor unless he shall have attained the age of thirty (30) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 88, p. 351; am. 1996, ch. 28, § 4, p. 67.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-608 was repealed. See Prior Laws, § 34-604.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-609. Election of secretary of state — Qualifications.** — (1) At the general election, 1974, and every four (4) years thereafter, a secretary of state shall be elected.

(2) No person shall be elected to the office of secretary of state unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 89, p. 351; am. 1996, ch. 28, § 5, p. 67.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-609 was repealed. See Prior Laws, § 34-604.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-610. Election of state controller — Qualifications.** — (1) At the general election, 1974, and every four (4) years thereafter, a state controller shall be elected.

(2) No person shall be elected to the office of state controller unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 90, p. 351; am. 1994, ch. 181, § 1, p. 575; am. 1996, ch. 28, § 6, p. 67.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-610 was repealed. See Prior Laws, § 34-604.

**Effective Dates.**

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has



been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.” Since such amendment was adopted, the amendment to this section by § 1 of S.L. 1994, ch. 181 became effective January 2, 1995.

## **RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-611. Election of state treasurer — Qualifications.** — (1) At the general election, 1974, and every four (4) years thereafter, a state treasurer shall be elected.

(2) No person shall be elected to the office of state treasurer unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 91, p. 351; am. 1996, ch. 28, § 7, p. 67.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-611 was repealed. See Prior Laws, § 34-604.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-612. Election of attorney general — Qualifications.** — (1) At the general election, 1974, and every four (4) years thereafter, an attorney general shall be elected.

(2) No person shall be elected to the office of attorney general unless he shall have attained the age of thirty (30) years at the time of his election, is admitted to the practice of law within the state, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 92, p. 351; am. 1996, ch. 28, § 8, p. 67.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-612 was repealed. See Prior Laws, § 34-604.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-612A — 34-612D. Certification of candidates — State, county assemblies — Independent candidates — Unendorsed political party candidates. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 1970, ch. 140, § 207: 34-612A. (I.C., § 34-612A, as added by 1963, ch. 93, § 6, p. 291; am. 1965 (E.S.), ch. 1, § 4, p. 5; am. 1966 (3rd E.S.), ch. 5, § 10, p. 16.) 34-612B. (I.C., § 34-612B, as added by 1963, ch. 93, § 7, p. 291; am. 1966 (3rd E.S.), ch. 5, § 11, p. 16; am. 1967, ch. 360, § 3, p. 1011.) 34-612C. (Repealed and reen., I.C., § 34-612C, 1967, ch. 360, § 12, p. 1011.) 34-612D. (I.C., § 34-612D, as added by 1963, ch. 93, § 9, p. 291; am. 1966 (3rd E.S.), ch. 5, § 12, p. 16; am. 1967, ch. 360, § 4, p. 1011.)

**34-613. Election of superintendent of public instruction — Qualifications.** — (1) At the general election, 1974, and every four (4) years thereafter, a superintendent of public instruction shall be elected.

(2) No person shall be elected to the office of superintendent of public instruction unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States, has a bachelor's degree from an accredited college or university, and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 93, p. 351; am. 1974, ch. 182, § 1, p. 1478; am. 1994, ch. 277, § 1, p. 864; am. 1996, ch. 28, § 9, p. 67.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

State superintendent of public instruction, § 67-1501 et seq.

**Prior Laws.**

Former § 64-613 was repealed. See Prior Laws, § 34-604.

**Effective Dates.**

Section 3 of S.L. 1974, ch. 182, declared an emergency. Approved April 2, 1974.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-614. Election of state representatives and senators — Qualifications.** — (1) At the general election, 1972, and every alternate year thereafter, there shall be elected in each legislative district such representatives and senators as they may be severally entitled.

(2) No person shall be elected to the office of representative or senator unless he shall have attained the age of twenty-one (21) years at the time of the general election, is a citizen of the United States and shall have been a registered elector within the legislative district one (1) year next preceding the general election at which he offers his candidacy.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of thirty dollars (\$30.00) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 94, p. 351; am. 1981 (Ex. Sess.), ch. 2, § 1, p. 5; am. 1996, ch. 28, § 10, p. 67; am. 2019, ch. 227, § 1, p. 711.

**STATUTORY NOTES**

**Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-614 was repealed. See Prior Laws, § 34-604.

**Amendments.**

The 2019 amendment, by ch. 227, substituted “been a registered elector” for “resided” near the end of subsection (2).

**Effective Dates.**

Section 2 of S.L. 1981 (Ex. Sess.), ch. 2 declared an emergency.  
Approved July 30, 1981.

## **JUDICIAL DECISIONS**

**Cited in:** [Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 \(1982\).](#)

## **RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048.](#)



**34-614A. Candidates for state legislature.** — (1) A candidate for the office of state senator in a multi-member legislative district, and all candidates for the office of representative shall declare, in their declarations of candidacy, the specific seat or position that they seek.

(2) The secretary of state shall designate positions by using the terms “Position A”, “Position B”, and continuing in such fashion until all seats or positions in each district are properly labeled. The positions in each district shall be separately and distinctly placed on the primary and general election ballots, and for each position to be filled the ballot shall state “Vote for one”.

(3) The candidate receiving the greatest number of votes for the position he seeks shall be declared nominated, or elected, as the case may be.

**History.**

I.C., § 34-614A, as added by 1984, ch. 121, § 2, p. 278.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-614A, which comprised I.C., § 34-614A, as added by 1975, ch. 230, § 1, p. 633, was repealed by S.L. 1984, ch. 121, § 1, effective March 30, 1984.

**Effective Dates.**

Section 3 of S.L. 1984, ch. 121 declared an emergency. Approved March 30, 1984.

**34-615. Election — Selection — Of justices of the supreme court — Qualifications.** — (1) At the primary election, 1972, and every alternate year thereafter, subject to the provisions of section 34-1217, Idaho Code, there shall be elected justices of the supreme court to fill any vacancy or vacancies occasioned by the expiration of the term or terms of office of any member or members.

(2) To be elected or appointed to the office of justice of the supreme court a person must, at the time of such election or appointment, meet all of the following qualifications: (a) Be at least thirty (30) years of age;

- (b) Be a citizen of the United States and an elector of the state of Idaho;
- (c) Have been a legal resident of the state of Idaho for at least two (2) continuous years immediately preceding such election or appointment;
- (d) Have been in good standing as an active or judicial member of the Idaho state bar for at least two (2) continuous years immediately preceding such election or appointment; and (e) Have held a license to practice law or held a judicial office in one (1) or more jurisdictions for at least ten (10) continuous years immediately preceding such election or appointment.

For purposes of this section, the following terms have the following meanings: (a) “Active,” “judicial” and “good standing” have the same definitions as those terms are given by rule 301 of the Idaho bar commission rules or any successors to those rules; (b) “Jurisdiction” means a state or territory of the United States, the District of Columbia or any branch of the United States military; and (c) “Elector” means one who is lawfully registered to vote.

(3) Each candidate for election shall file a declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of three hundred dollars (\$300) which shall be deposited in the general fund.

**History.**

1970, ch. 140, § 95, p. 351; am. 1972, ch. 46, § 1, p. 84; am. 1985, ch. 29, § 6, p. 52; am. 1996, ch. 28, § 11, p. 67; am. 2015, ch. 310, § 3, p. 1215.

## **STATUTORY NOTES**

### **Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

The following former sections were repealed by S.L. 1970, ch. 140, § 207: 34-615. (1931, ch. 18, § 14, p. 29; I.C.A., § 33-614.)

34-616. (1931, ch. 18, § 15, p. 29; I.C.A., § 33-615; am. 1933, ch. 185, § 5, p. 341.) 34-617. (1931, ch. 18, § 16, p. 29; I.C.A., § 33-616; am. 1933, ch. 185, § 6, p. 341; am. 1949, ch. 131, § 2, p. 234.) 34-618. (1931, ch. 18, § 17, p. 29; I.C.A., § 33-617.)

34-619. (1931, ch. 18, § 1, p. 29; I.C.A., § 33-618; am. 1959, ch. 146, § 4, p. 331; am. 1966 (3rd E.S.), ch. 5, § 13, p. 16.) 34-620. (1931, ch. 18, § 19, p. 29; I.C.A., § 33-619; am. 1959, ch. 146, § 5, p. 331; am. 1966 (3rd E.S.), ch. 5, § 14, p. 16.) 34-621. (1931, ch. 18, § 20, p. 29; I.C.A., § 33-620.)

34-622. (1931, ch. 18, § 21, p. 29; I.C.A., § 33-621.)

34-623. (1931, ch. 18, § 22, p. 29; I.C.A., § 33-622.)

34-624. (1931, ch. 18, § 23, p. 29; I.C.A., § 33-623; am. 1933, ch. 185, § 7, p. 341; am. 1953, ch. 39, § 1, p. 58; am. 1957, ch. 82, § 1, p. 133; am. 1966 (3rd E.S.), ch. 5, § 15, p. 16; am. 1967, ch. 360, § 5, p. 1011.) 34-624A. (1966 (3rd E.S.), ch. 5, § 16, p. 16; am. 1967, ch. 360, § 6, p. 1011.)  
Amendments.

The 2015 amendment, by ch. 310, inserted “Selection” in the section heading; rewrote subsection (2), which formerly read: “No person shall be elected to the office of justice of the Supreme Court unless he has attained the age of thirty (30) years at the time of his election, is a citizen of the United States, shall have been admitted to the practice of law for at least ten (10) years prior to taking office, and is admitted to practice law in the state

of Idaho, and has resided within this state two (2) years next preceding his election”; and substituted “for election shall file a declaration” for “shall file his declaration” in subsection (3).

**Legislative Intent.**

Section 9 of S.L. 1985, ch. 29 read: “This act shall be in full force and effect on and after July 1, 1985; provided that notwithstanding the provisions of sections 3, 4, 5 and 6 of this act, it is the intent of the legislature that the provisions of this act requiring that persons be admitted to the practice of law within this state for at least ten years prior to taking office, shall not apply to justices or judges holding office on the effective date of this act, nor prohibit them from seeking election, reelection or appointment to the office of supreme court justice, court of appeals judge, or district judge, as provided by law.”

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-616. Election — Selection — Of district judges — Qualifications.**

— (1) At the primary election, 1974, and every four (4) years thereafter, subject to the provisions of section 34-1217, Idaho Code, there shall be elected in each judicial district a sufficient number of district judges to fill any vacancy or vacancies occasioned by the expiration of the term or terms of office of any member or members.

(2) To be elected to the office of district judge a person must, at the time of such election, meet all of the following qualifications:

- (a) Be at least thirty (30) years of age;
- (b) Be a citizen of the United States and an elector in the judicial district in which elected;
- (c) Have been a legal resident of the state of Idaho for at least two (2) continuous years immediately preceding such election;
- (d) Have been in good standing as an active or judicial member of the Idaho state bar for at least two (2) continuous years immediately preceding such election; and
- (e) Have held a license to practice law or held a judicial office in one (1) or more jurisdictions for at least ten (10) continuous years immediately preceding such election.

(3) Each candidate for election shall file a declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of one hundred fifty dollars (\$150) which shall be deposited in the general fund.

(5) To be appointed to the office of district judge a person must, at the time of such appointment, meet all of the following qualifications:

- (a) Be at least thirty (30) years of age;
- (b) Be a citizen of the United States and an elector of the state of Idaho;

(c) Have been a legal resident of the state of Idaho for at least two (2) continuous years immediately preceding such appointment;

(d) Have been in good standing as an active or judicial member of the Idaho state bar for at least two (2) continuous years immediately preceding such appointment; and

(e) Have held a license to practice law or held a judicial office in one (1) or more jurisdictions for at least ten (10) continuous years immediately preceding such appointment.

(6) For purposes of this section, the following terms have the following meanings:

(a) “Active,” “judicial” and “good standing” have the same definitions as those terms are given by rule 301 of the Idaho bar commission rules or any successors to those rules;

(b) “Jurisdiction” means a state or territory of the United States, the District of Columbia or any branch of the United States military; and

(c) “Elector” means one who is lawfully registered to vote.

### **History.**

1970, ch. 140, § 96, p. 351; am. 1970, ch. 231, § 1, p. 643; am. 1972, ch. 46, § 2, p. 84; am. 1985, ch. 29, § 7, p. 52; am. 1996, ch. 28, § 12, p. 67; am. 2015, ch. 282, § 4, p. 1147; am. 2015, ch. 310, § 4, p. 1215; am. 2016, ch. 47, § 19, p. 98.

## **STATUTORY NOTES**

### **Cross References.**

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-616 was repealed. See Prior Laws, § 34-615.

### **Amendments.**

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 282, inserted “within the state at least two (2) years and” and inserted “and be an elector of the district” near the end of subsection (2).

The 2015 amendment, by ch. 310, inserted “Selection” in the section heading; rewrote subsection (2), which formerly read: “No person shall be elected to the office of judge of the district court unless he has attained the age of thirty (30) years at the time of his election, is a citizen of the United States, shall have been admitted to the practice of law for at least ten (10) years prior to taking office, and is admitted to practice law in the state of Idaho, and shall have resided within the judicial district one (1) year next preceding his election”; substituted “for election shall file a declaration” for “shall file his declaration” in subsection (3); and added subsection (5).

The 2016 amendment, by ch. 47, deleted an extraneous word at the end of paragraph (2)(e).

### **Legislative Intent.**

Section 9 of S.L. 1985, ch. 29 read: “This act shall be in full force and effect on and after July 1, 1985; provided that notwithstanding the provisions of sections 3, 4, 5 and 6 of this act, it is the intent of the legislature that the provisions of this act requiring that persons be admitted to the practice of law within this state for at least ten years prior to taking office, shall not apply to justices or judges holding office on the effective date of this act, nor prohibit them from seeking election, reelection or appointment to the office of supreme court justice, court of appeals judge, or district judge, as provided by law.”

### **Effective Dates.**

Section 5 of S.L. 1972, ch. 46 declared an emergency. Approved February 28, 1972.

Section 9 of S.L. 2015, ch. 282 declared an emergency. Approved April 6, 2015.

## **RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).



**34-617. Election of county commissioners — Qualifications.** — (1) A board of county commissioners shall be elected in each county at the general elections as provided by section 31-703, Idaho Code.

(2) No person shall be elected to the board of county commissioners unless he has attained the age of twenty-one (21) years at the time of the election, is a citizen of the United States, and shall have resided in the county one (1) year next preceding his election and in the district which he represents for a period of ninety (90) days next preceding the primary election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

**History.**

1970, ch. 140, § 97, p. 351; am. 1982, ch. 332, § 2, p. 839; am. 1993, ch. 159, § 1, p. 409; am. 1996, ch. 28, § 13, p. 67.

**STATUTORY NOTES**

**Cross References.**

District from which member elected, § 31-702.

**Prior Laws.**

Former § 34-617 was repealed. See Prior Laws, § 34-615.

**JUDICIAL DECISIONS**

**Cited in:** Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975); Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 (1982).

Decisions Under Prior Law Analysis

Counting of votes.

Vacancies.

### Counting of Votes.

While commissioners are elected one from each district, voters of the whole county should cast their votes for each of the commissioners, and all votes so cast should be counted in determining who is elected to board. *Cunningham v. George*, 3 Idaho 456, 31 P. 809 (1892).

### Vacancies.

Statutory provisions relating to filling vacancies in county offices by appointment until next general election recognize the democratic principle requiring that elective offices shall, if possible, be filled at all times by incumbents chosen by electors, and that it is general policy of law that vacancies shall be filled at an election as soon as practicable after vacancy occurs. *Winter v. Davis*, 65 Idaho 696, 152 P.2d 249 (1944).

## RESEARCH REFERENCES

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

**34-618. Election of county sheriffs — Qualifications.** — (1) At the general election, 1972, and every four (4) years thereafter, a sheriff shall be elected in every county.

(2) No person shall be elected to the office of sheriff unless he has attained the age of twenty-one (21) years at the time of election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

(5) Each person who has been elected to the office of sheriff for the first time shall complete a tutorial concerning current Idaho law and rules as prescribed by the Idaho peace officers standards and training academy [Idaho peace officer standards and training council], unless the person is already certified as a chief of police, peace officer or detention deputy in the state of Idaho, and shall attend the newly elected sheriffs' school sponsored by the Idaho sheriffs' association.

**History.**

1970, ch. 140, § 98, p. 351; am. 1996, ch. 28, § 14, p. 67; am. 2008, ch. 329, § 1, p. 901.

**STATUTORY NOTES**

**Cross References.**

Peace officer standards and training counsel, § 19-5101 et seq.

**Prior Laws.**

Former § 34-618 was repealed. See Prior Laws, § 34-615.

**Amendments.**

The 2008 amendment, by ch. 329, added subsection (5).

### **Compiler's Notes.**

The bracketed insertion in subsection (5) was added by the compiler to correct the name of the referenced agency. See § 19-5101 et seq.

For more on Idaho sheriffs' association, referred to in subsection (5), see <https://www.idahosheriffs.org>.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law Term.**

Idaho [Const., Art. XVIII, § 6](#), as amended at the 1964 election, provided that the legislature should “commencing with general election in 1964 provide \* for the election of a sheriff every four years \*.” This provision was self-executing and the term of the sheriff elected in 1964 was for four years, regardless of whether the legislature obeyed the constitutional mandate. [Haile v. Foote, 90 Idaho 261, 409 P.2d 409 \(1965\)](#).

## **OPINIONS OF ATTORNEY GENERAL**

### **Certification.**

The legislature may mandate, under this section, that a duly-elected sheriff be certified by the police officer standards and training council, either prior to his or her election or within a reasonable time following his or her election. OAG 10-2.

## **RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-619. Election of clerks of district courts — Qualifications.** — (1) At the general election, 1974, and every four (4) years thereafter, a clerk of the district court shall be elected in every county. The clerk of the district court shall be the ex officio auditor and recorder.

(2) No person shall be elected to the office of clerk of the district court unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States, and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

**History.**

1970, ch. 140, § 99, p. 351; am. 1996, ch. 28, § 15, p. 67.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-619 was repealed. See Prior Laws, § 34-615.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-620. Election of county treasurers — Qualifications.** — (1) At the general election, 1974, and every four (4) years thereafter, a county treasurer shall be elected in every county. The county treasurer shall be the ex officio public administrator and ex officio tax collector.

(2) No person shall be elected to the office of county treasurer unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

**History.**

1970, ch. 140, § 100, p. 351; am. 1971, ch. 193, § 2, p. 879; am. 1996, ch. 28, § 16, p. 67.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-620 was repealed. See Prior Laws, § 34-615.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-621. Election of county assessors — Qualifications.** — (1) At the general election, 1974, and every four (4) years thereafter, a county assessor shall be elected in every county.

(2) No person shall be elected to the office of county assessor unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

**History.**

1970, ch. 140, § 102, p. 351; am. 1971, ch. 193, § 3, p. 879; am. 1996, ch. 28, § 17, p. 67.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-621 was repealed. See Prior Laws, § 34-615.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-622. Election of county coroners — Qualifications.** — (1) At the general election, 1986, and every four (4) years thereafter, a coroner shall be elected in every county.

(2) No person shall be elected to the office of coroner unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

(5) All newly elected or appointed county coroners shall attend a coroner's school within one (1) year of taking office. Such school shall be sponsored or endorsed by the Idaho state association of county coroners.

### **History.**

1970, ch. 140, § 102, p. 351; am. 1994, ch. 54, § 5, p. 93; am. 1996, ch. 28, § 18, p. 67; am. 2010, ch. 355, § 2, p. 932.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-622 was repealed. See Prior Laws, § 34-615.

### **Amendments.**

The 2010 amendment, by ch. 355, added subsection (5).

### **Compiler's Notes.**

For more on Idaho state association of county coroners, see <http://idcounties.org/index.aspx?NID=99>.

S.L. 2010, Chapter 355 became law without the signature of the governor, effective July 1, 2010.



**Effective Dates.**

Section 7 of S.L. 1994, ch. 54, provided that “an emergency existing therefor, which emergency is hereby declared to exist, Sections 4, 5 and 6 of this act shall be in full force and effect on and after March 3, 1994. Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 1994.”

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-623. Election of county prosecuting attorneys — Qualifications. —**

(1) At the general election, 1984, and every four (4) years thereafter, a prosecuting attorney shall be elected in every county.

(2) No person shall be elected to the office of prosecuting attorney unless he has attained the age of twenty-one (21) years at the time of his election, is admitted to the practice of law within this state, is a citizen of the United States and a qualified elector within the county.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

**History.**

1970, ch. 140, § 103, p. 351; am. 1972, ch. 115, § 1, p. 230; am. 1984, ch. 80, § 1, p. 147; am. 1996, ch. 28, § 19, p. 67.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-623 was repealed. See Prior Laws, § 34-615.

**Effective Dates.**

Section 2 of S.L. 1984, ch. 80 declared an emergency. Approved March 23, 1984.

**34-624. Election of precinct committeemen — Qualifications. — (1)**

At the primary election, 1980, and every two (2) years thereafter, a precinct committeeman for each political party shall be elected in every voting precinct within each county. The term of office of a precinct committeeman shall be from the eighth day following the primary election until the eighth day following the next succeeding primary election.

(2) No person shall be elected to the office of precinct committeeman unless he has attained the age of eighteen (18) years at the time of his election, is a citizen of the United States, a registered elector of and shall have resided within the voting precinct for a period of six (6) months next preceding his election.

(3) Each candidate shall file a declaration of candidacy with the county clerk.

(4) No filing fee shall be charged any candidate at the time of his filing his declaration of candidacy.

**History.**

1970, ch. 140, § 104, p. 351; am. 1971, ch. 29, § 1, p. 73; am. 1972, ch. 128, § 1, p. 256; am. 1975, ch. 174, § 16, p. 469; am. 1979, ch. 309, § 3, p. 833; am. 1996, ch. 28, § 20, p. 67; am. 2011, ch. 285, § 5, p. 778.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-624 was repealed. See Prior Laws, § 34-615.

**Amendments.**

The 2011 amendment, by ch. 285, inserted “a registered elector of” in subsection (2).

**Effective Dates.**

Section 2 of S.L. 1972, ch. 128 declared an emergency. Approved March 13, 1972.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

## **RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).

**34-624A. Alternative to precinct committeeman — Precinct committeeman and voters' delegate to the party's county and district conventions.** — (1) At least sixty (60) days prior to an election at which precinct committeemen are to be elected, the state chairman of any Idaho political party may request the secretary of state to replace, as to that party chairman's party, the ballot position title of "precinct committeeman" with the ballot position title "precinct committeeman and voters' delegate to the party's county and district conventions." The party chairman making such a request to the secretary of state shall include with his request a sworn and acknowledged affidavit stating that he is the party chairman for his political party and that it is the state policy of his party that precinct committeemen be delegates to the party's county and district conventions.

(2) Upon receipt of such request and affidavit, the secretary of state shall have the duty to implement the request when prescribing the form and content of ballots and related documents and when preparing ballot instructions for Idaho counties.

(3) After the secretary of state has ordered such use, whenever the title "precinct committeeman" or its plural form shall be used in the Idaho Code, the title shall be construed to include within its meaning the title "precinct committeeman and voters' delegate to the party's county and district conventions" or its plural form.

### **History.**

I.C., § 34-624A, as added by 1976, ch. 346, § 1, p. 1153.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-624A was repealed. See Prior Laws, § 34-615.

### **Effective Dates.**

Section 2 of S.L. 1976, ch. 346 declared an emergency. Approved April 1, 1976. The attorney general ruled that S.L. 1976, Chapter 346 became law without the governor's signature on March 31, 1976.

**34-625. Election of highway district commissioners in single countywide districts — Qualifications.** — (1) In each general election, highway district commissioners in single countywide districts shall be elected as provided for in section 40-1404, Idaho Code.

(2) No person shall be elected to the office of highway district commissioner unless he shall have attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States, and shall be a resident of the highway district commissioner's subdistrict for which he seeks office.

(3) Each candidate shall file a declaration of candidacy with the county clerk not less than ninety (90) days prior to the general election. Each declaration of candidacy shall also bear the following words: "I am a resident within the boundaries of Highway District Commissioner's Subdistrict Number ....."

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ten dollars (\$10.00) which shall be deposited in the county current expense fund.

### **History.**

I.C., § 34-625, as added by S.L. 1972, ch. 345, § 1, p. 1013; am. 1985, ch. 253, § 4, p. 586; am. 1987, ch. 75, § 1, p. 146; am. 1998, ch. 300, § 3, p. 987; am. 2007, ch. 313, § 1, p. 884.

## **STATUTORY NOTES**

### **Prior Laws.**

A former § 34-625, which comprised S.L. 1931, ch. 18, § 24, p. 29; I.C.A., § 33-624; am. 1933, ch. 185, § 1, p. 341, was repealed by S.L. 1963, ch. 93, § 11, p. 291. S.L. 1965, ch. 247, § 1, p. 623 created a new § 34-625 which was repealed by S.L. 1970, ch. 140, § 207.

### **Amendments.**

The 2007 amendment, by ch. 313, substituted “not less than ninety (90) days” for “not more than ninety (90) days nor less than sixty (60) days” in subsection (3).

**Effective Dates.**

Section 3 of S.L. 1972, ch. 345 provided the act should take effect on and after July 1, 1972.

Section 5 of S.L. 1998, ch. 300 declared an emergency. Approved March 24, 1998.

**RESEARCH REFERENCES**

**A.L.R.** — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. [65 A.L.R.3d 1048](#).



**34-625A. Election of highway district commissioners in certain single countywide districts — Qualifications.** — (1) In each general election, highway district commissioners in single countywide districts shall be elected as provided for in section 40-1404A, Idaho Code.

(2) No person shall be elected to the office of highway district commissioner unless he shall have attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States, and shall be a resident of the highway district commissioner's subdistrict for which he seeks office.

(3) Each candidate shall file a declaration of candidacy with the county clerk not less than ninety (90) days prior to the general election. Each declaration of candidacy shall also bear the following words: "I am a resident within the boundaries of Highway District Commissioner's Subdistrict Number ....."

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ten dollars (\$10.00) which shall be deposited in the county current expense fund.

### **History.**

**I.C., § 34-625A**, as added by 1998, ch. 300, § 4, p. 987; am. 2007, ch. 313, § 2, p. 884.

## **STATUTORY NOTES**

### **Amendments.**

The 2007 amendment, by ch. 313, substituted "not less than ninety (90) days" for "not more than ninety (90) days nor less than sixty (60) days" in subsection (3).

### **Effective Dates.**

Section 5 of S.L. 1998, ch. 300 declared an emergency. Approved March 24, 1998.

**34-626. Petition in lieu of filing fee.** — In lieu of paying the filing fee, candidates may qualify for the offices mentioned in section 34-604 through section 34-623, Idaho Code, by filing a declaration of candidacy and a nominating petition. The petition shall contain the signatures of qualified electors as follows:

- (a) One thousand (1,000) for any statewide office;
- (b) Five hundred (500) for any congressional district office (all signatures within proper district);
- (c) Two hundred (200) for the office of district judge (all signatures within proper district);
- (d) Fifty (50) for any legislative district office (all signatures within proper district);
- (e) Five (5) for any county office (county commissioner signatures shall be within commissioner district).

Signatures on such nominating petitions shall be verified in the manner prescribed in [section 34-1807, Idaho Code](#).

### **History.**

[I.C., § 34-626](#), as added by 1996, ch. 28, § 22, p. 67.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-626, which comprised [I.C., § 34-626](#), as added by 1983, ch. 213, § 3, p. 590; am. 1986, ch. 183, § 1, p. 480, was repealed by S.L. 1996, ch. 28, § 21, effective February 15, 1996.

Another former § 34-626 which comprised S.L. 1931, ch. 18, §§ 24, 25, p. 29; I.C.A., § 33-625; am. 1933, ch. 185, § 9, p. 341, was repealed by S.L. 1963, ch. 93, § 11, p. 291.

### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 29 of S.L. 1996, ch. 28 declared an emergency. Became law without the Governor's signature, February 15, 1996.

**34-627. Holders of partisan elective office changing political parties.**

— Whenever any holder of a partisan elective office desires to change political parties, the change shall only be effective if the holder files a declaration of intent to change political parties with the election official with whom the holder of the partisan elective office has filed his declaration of candidacy for the office that the holder of the partisan elective office currently holds. After receiving the declaration of intent, the election official shall send a copy of the declaration to the affected political party central committees of both the political party, if any, that the holder of the partisan elective office desires to leave and the political party, if any, that the holder of the partisan elective office desires to join. A holder of a partisan elective office cannot change political parties between the date the holder of partisan elective office files for the primary election through three (3) months after the general election in which the partisan elective office was on the ballot. A holder of a partisan elective office only may change political parties pursuant to this section once per term. The election official shall be authorized to charge a holder of a partisan elective office desiring to change his political party a twenty-five dollar (\$25.00) fee to defray the election official's expenses in administering the provisions of this section.

**History.**

I.C., § 34-627, as added by 1997, ch. 202, § 1, p. 576; am. 2017, ch. 21, § 1, p. 39.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-627, which comprised, S.L. 1931, ch. 18, § 26, p. 29; I.C.A., § 33-626; am. 1933, ch. 185, § 10, p. 341; am. 1953, ch. 263, § 1, p. 454; am. 1963, ch. 93, § 9, p. 291, was repealed by S.L. 1970, ch. 140, § 207.

**Amendments.**

The 2017 amendment, by ch. 21, deleted the former second sentence, which read: "The party change shall be official five (5) calendar days after

receipt of the declaration of intent provided in this section by the election official”.

**34-627A — 34-639. Central committees — Counting of votes — Certification of candidates and of results — Vacancies after election. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 1970, ch. 140, § 207: 34-627A. (I.C., § 34-627A, as added by 1953, ch. 53, § 1, p. 72.) 34-628. (1931, ch. 18, § 27, p. 29; I.C.A., § 33-627; am. 1933, ch. 185, § 11, p. 341.) 34-629. (1931, ch. 18, § 28, p. 29; I.C.A., § 33-628.)

34-630. (1931, ch. 18, § 29, p. 29; I.C.A., § 33-629.)

34-631. (1931, ch. 18, § 30, p. 29; I.C.A., § 33-630.)

34-632. (1931, ch. 18, § 31, p. 29; I.C.A., § 33-631; am. 1959, ch. 146, § 6, p. 331; am. 1966 (3rd E.S.), ch. 5, § 17, p. 16; am. 1967, ch. 360, § 7, p. 1011.) 34-633. (1931, ch. 18, § 32, p. 29; I.C.A., § 33-632.)

34-634. (1931, ch. 18, § 33, p. 29; I.C.A., § 33-633; am. 1965 (E.S.), ch. 1, § 5, p. 5; am. 1966 (3rd E.S.), ch. 5, § 18, p. 16.) 34-635. (1931, ch. 18, § 34, p. 29; I.C.A., § 33-634; am. 1945, ch. 123, § 1, p. 189.) 34-636. (1931, ch. 18, § 35, p. 29; I.C.A., § 33-635; am. 1959, ch. 146, § 7, p. 331; am. 1965 (E.S.), ch. 1, § 6; 1966 (3rd E.S.), ch. 5, § 6.) 34-637. (1931, ch. 18, § 36, p. 29; I.C.A., § 33-636; am. 1959, ch. 146, § 8, p. 331; am. 1963, ch. 93, § 10, p. 291; am. 1965 (E.S.), ch. 1, § 5, p. 5; am. 1966 (3rd E.S.), ch. 5, § 20, p. 16.) 34-638. (1931, ch. 18, § 37, p. 29; I.C.A., § 33-637; am. 1961, ch. 75, § 1, p. 102; am. 1966 (3rd E.S.), ch. 5, § 21, p. 16.) 34-639. (1931, ch. 18, § 38, p. 29; I.C.A., § 33-638.)

**34-640. Nomination by convention. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1931, ch. 18, § 39, p. 29; I.C.A., § 33-639, was repealed by S.L. 1966 (3rd E.S.), ch. 5, § 22, p. 16.

**34-641 — 34-649. Certificates of nomination — Fees — Publication — Declining nomination — Filling of vacancies. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 1970, ch. 140, § 207: 34-641. (1931, ch. 18, § 40, p. 29; I.C.A., § 33-640.) 34-642. (1931, ch. 18, § 41, p. 29; I.C.A., § 33-641.) 34-643. (1931, ch. 18, § 42, p. 29; I.C.A., § 33-642.) 34-644. (1931, ch. 18, § 43, p. 29; I.C.A., § 33-643.) 34-645. (1931, ch. 18, § 44, p. 29; I.C.A., § 33-644; am. 1944 (1st E.S.), ch. 2, § 5, p. 4.) 34-646. (1931, ch. 18, § 45, p. 29; I.C.A., § 33-645; am. 1944 (1st E.S.), ch. 2, § 6, p. 4; am. 1959, ch. 146, § 9, p. 331; am. 1965 (E.S.), ch. 1, § 8; am. 1966 (3rd E.S.), ch. 5, § 23; am. 1967, ch. 360, § 8, p. 1011.) 34-647. (1931, ch. 18, § 46, p. 29; I.C.A., § 33-646; am. 1944 (1st E.S.), ch. 2, § 7, p. 4.) 34-648. (1931, ch. 18, § 47, p. 29; I.C.A., § 33-647; am. 1965 (E.S.), ch. 1, § 9; am. 1966 (3rd E.S.), ch. 5, § 24, p. 16; am. 1967, ch. 360, § 13, p. 1011.) 34-649. (1931, ch. 18, § 48, p. 29; I.C.A., § 33-648.)



« Title 34 •, « Ch. 6 », « 34-650,34-650A. Run-off primary elections. »

Idaho Code 34-650,34-650A. Run-off primary elections

## **34-650, 34-650A. Run-off primary elections. [Repealed.]**

### **STATUTORY NOTES**

#### **Compiler's Notes.**

These sections, which comprised I.C., §§ 34-650, 34-650A, as added by 1959, ch. 146, §§ 10, 11, p. 331, were repealed by S.L. 1963, ch. 93, § 11, p. 291.

**34-651. “Political party” defined. [Repealed.]**

**STATUTORY NOTES**

**Compiler’s Notes.**

This section which comprised S.L. 1970, ch. 228, § 1, p. 637 was repealed by S.L. 1970, ch. 140, § 207, effective January 1, 1971. A former section which comprised S.L. 1919, ch. 107, § 2, p. 372; C.S., § 517; am. 1927, ch. 83, § 1, p. 101 was repealed by S.L. 1970, ch. 228, § 2. For present comparable provisions, see § 34-501.



## **CHAPTER 7**

### **NOMINATIONS — CONVENTIONS — PRIMARY ELECTIONS**

#### **Section.**

- 34-701. Declarations of candidacy and petitions — Form prescribed by secretary of state — Filing fees.
- 34-702. Requirements for write-in candidates at primary.
- 34-702A. Declaration of intent for write-in candidates.
- 34-703. Nomination at primary.
- 34-704. Declaration of candidacy.
- 34-705. With whom declarations filed.
- 34-706. Notification to parties.
- 34-707. Party conventions.
- 34-708. Independent candidates.
- 34-708A. Independent candidates for president and vice-president.
- 34-709, 34-710. Certification of candidates — Placing of names on ballot.  
[Repealed.]
- 34-711. Certification of candidates for president, vice president and presidential electors.
- 34-711A. Certification of independent presidential electors.
- 34-712. Sample form for primary election ballots.
- 34-713. Preparation of primary ballots.
- 34-714. Filling vacancies in slate of political party candidates occurring prior to primary election.
- 34-715. Filling of vacancies occurring before or after primary election.
- 34-716. Vacancies of candidates for nonpartisan offices occurring before general election not filled — Exceptions — Judicial offices.

34-717. Withdrawal of candidacy.

34-718 — 34-722. Filling of vacancies after nomination for judicial offices.  
[Repealed.]

34-723 — 34-730. [Reserved.]

34-731. Presidential primary.

34-732. Candidates.

34-733. Removal from ballot.

34-734. Voting.

34-735. Presidential primary — Results.

34-736. Delegates to the national convention.

34-737. Conduct of election.

34-738. Costs of presidential primary.

34-739. Costs of presidential preference primary notice and ballots.  
[Repealed.]

34-740. Rules.

**34-701. Declarations of candidacy and petitions — Form prescribed by secretary of state — Filing fees.** — (1) The secretary of state shall prescribe the form for all declarations of candidacy and petitions required to be filed for any office. This form shall be uniform throughout the state; provided, however, that a candidate for judicial office must designate the particular office that he seeks, both in his petitions and declaration of candidacy.

(2) All filing fees shall be paid in cash, cashier's check, postal money orders, or personal check.

**History.**

1970, ch. 140, § 105, p. 351; am. 1970, ch. 231, § 2, p. 643; am. 1983, ch. 213, § 4, p. 590.

**STATUTORY NOTES**

**Cross References.**

Filing fees for various offices, §§ 34-604 to 34-626.

Penalties for violation of election laws, § 18-2301 et seq.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

The following former sections were repealed by S.L. 1970, ch. 140, § 208: 34-701. (1933, ch. 16, § 1, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1955, ch. 164, § 1, p. 325.) 34-702. (1933, ch. 16, § 2, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1949, ch. 86, § 5, p. 149; am. 1955, ch. 164, § 2, p. 325; am. 1967, ch. 148, § 1, p. 334.) 34-703. (1933, ch. 16, § 3, p. 18; am. 1935, ch. 12, § 1, p. 27.) 34-704. (1933, ch. 16, § 4, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1955, ch. 164, § 3, p. 325.) 34-705. (1933, ch. 16, § 5, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1955, ch. 164, § 4, p. 325.) 34-706. (1933, ch. 16, § 6, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1955, ch. 164, § 5, p. 325.) 34-707. (1933, ch. 16, § 7, p. 18; am. 1935, ch. 12, § 1, p. 27; am. 1937, ch. 106, § 1, p. 158; am. 1955, ch. 164, § 6, p. 325.) JUDICIAL DECISIONS

**Cited in:** *Robinson v. Bodily*, 97 Idaho 199, 541 P.2d 623 (1975).

## Decisions Under Prior Law

### Analysis

**Mandamus.**

**Non-party member.**

**Mandamus.**

Supreme court accepted original jurisdiction of mandamus to compel secretary of state to accept and file declaration of candidacy, where validity of constitutional amendment was in issue and time remaining before nominating convention was short. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

**Non-party Member.**

There is no provision of primary law that forbids a political party from nominating one who is not a member of such party, and such nomination does not create a vacancy on such party ticket. *Sutphen v. Enking*, 39 Idaho 728, 230 P. 38 (1924).

## RESEARCH REFERENCES

**A.L.R.** — Constitutionality of candidate participation provisions for primary elections. 121 A.L.R.5th 1.

Effect of irregularities or defects in primary petitions — State cases. 14 A.L.R.6th 543.

Construction and application of statutes and ordinances concerning establishment of residency, as condition for running for municipal office. 74 A.L.R.6th 209.

**34-702. Requirements for write-in candidates at primary.** — (1) In addition to possessing all other qualifications, in order to become a candidate of a political party at the general election, those candidates whose names are written in at the primary election must:

(a) Receive at least the following number of write-in votes at the primary election: (i) One thousand (1,000) for any statewide office; (ii) Five hundred (500) for a congressional district office; (iii) Fifty (50) for a legislative district office; or (iv) Five (5) for a county office; and

(b) File a declaration of intent for that office, pursuant to [section 34-702A, Idaho Code](#).

(2) Candidates who are required to file with the secretary of state shall pay the filing fee required for that office no later than the deadline for filing a declaration of intent pursuant to [section 34-702A, Idaho Code](#), or shall file a petition pursuant to [section 34-626, Idaho Code](#).

(3) No write-ins shall be allowed for judicial office.

### **History.**

1970, ch. 140, § 106, p. 351; am. 1970, ch. 231, § 3, p. 643; am. 1976, ch. 60, § 1, p. 200; am. 1996, ch. 28, § 23, p. 67; am. 2020, ch. 69, § 1, p. 157.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-702 was repealed. See Prior Laws, § 34-701.

### **Amendments.**

The 2020 amendment, by ch. 69, rewrote the section to the extent that a detailed comparison is impracticable.

## **JUDICIAL DECISIONS**

**Cited in:** [Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 \(1975\)](#).



## RESEARCH REFERENCES

**A.L.R.** — Challenges to write-in ballots and certification of write-in candidates. [75 A.L.R.6th 311](#).

**34-702A. Declaration of intent for write-in candidates.** — (1) No write-in vote for any office in a primary, special, or general election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of said office if elected. The declaration of intent shall be filed with the secretary of state if for a federal, state, or legislative district office and with the county clerk if for a county office. Such declaration of intent shall be filed no later than the eighth Friday before the day of election. The secretary of state shall prescribe the form for said declaration.

(2) In those counties which utilize optical scan ballots, an elector shall not place on the ballot a sticker bearing the name of a person, or use any other method or device, except writing, to vote for a person whose name is not printed on the ballot.

### **History.**

I.C., § 34-702A, as added by 1983, ch. 213, § 5, p. 590; am. 1992, ch. 176, § 3, p. 553; am. 1993, ch. 313, § 4, p. 1157; am. 1999, ch. 221, § 1, p. 588; am. 2001, ch. 272, § 1, p. 993; am. 2010, ch. 162, § 1, p. 335; am. 2020, ch. 69, § 2, p. 157.

## **STATUTORY NOTES**

### **Amendments.**

The 2010 amendment, by ch. 162, substituted “twenty-eight (28) days” for “fourteen (14) days” near the end of the first paragraph.

The 2020 amendment, by ch. 69, added the subsection designators; and substituted “the eighth Friday” for “twenty-eight (28) days” near the end of the third sentence in subsection (1).

### **Legislative Intent.**

Section 1 of S.L. 1992, ch. 176 read: “It is the finding of the legislature that the process of exercising the elective franchise should be made as accessible as possible for as many citizens as possible. The provisions of this bill will achieve a significant consolidation of elections on four (4)

election dates in each year. In addition, this election code, which applies to the various political subdivisions of the state of Idaho, will assure access to the nominating process, registration of potential electors, absentee voting opportunity and an increased visibility of the electoral process to assure public access and increase participation. At a future date, it may be warranted to further consolidate elections as events demonstrate that need. The goal of providing increased visibility for the electoral process will be well served by this consolidation of elections, by the increased public notice of filing and election deadlines, and the public education which will accompany the implementation of this act.”

### **Effective Dates.**

Section 7 of S.L. 1992, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1994, except that the provisions of Section 6 [appropriation] of this act shall be in full force and effect on and after July 1, 1992.”

Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

Section 2 of S.L. 2010, ch. 162 declared an emergency. Approved March 31, 2010.

**34-703. Nomination at primary.** — (1) All political party candidates for United States senator and representative in congress and all political party candidates for elective state, district and county offices, except candidates for judicial office, at general elections shall be nominated at the primary elections, or shall have their names placed on the general election ballot as provided by law, and shall comply with the provisions of this act.

(2) All candidates for judicial office shall be nominated or elected at the primary election, as provided by [section 34-1217, Idaho Code](#).

(3) Independent candidates shall not be voted on at primary elections.

### **History.**

[I. C., § 34-703](#), as added by 1971, ch. 5, § 2, p. 11; am. 1972, ch. 46, § 3, p. 84; am. 1976, ch. 60, § 2, p. 200.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-703 was repealed. See Prior Laws, § 34-701.

### **Compiler's Notes.**

The words “this act”, at the end of subsection (1), were added by S.L. 1971, chapter 5, which is codified as §§ 34-703 to 34-707, 34-2421, and 34-2422. Because these provisions may have been inadvertently omitted from S.L. 1970, chapter 140 (House Bill 555), “this act” may have been meant to refer to that act, which is codified throughout Title 34. Section 1 of S.L. 1971, ch. 5 read: “The purpose of this bill is to correct inadvertent omissions which occurred in the engrossing process after House Bill No. 555 was amended in the House in the Second Regular Session of the Fortieth Idaho Legislature. The bill, a substantial rewrite of the election laws, was initially properly printed. The bill was passed by the House as amended and sent to be engrossed. The engrosser omitted the following material from the bill sent to the Senate. The erroneous bill passed the Senate and was signed by the Governor. The omitted material thus did not become law. The error was later discovered and the code commissioners

then compiled the statutes in such a way as to facilitate adding the text which constitute section 2 through 8 of this bill.”

## **JUDICIAL DECISIONS**

### **Analysis**

Placement on general election ballot.

Political parties construed.

#### **Placement on General Election Ballot.**

Where the unsuccessful candidate for county commissioner at primary election had been denied only the placement of his name on the general election ballot and not the right to be an independent candidate, the election laws did not deny such candidate equal protection of law, nor did they abridge the free and equal exercise of the right of suffrage by those wishing to vote for an independent candidate. *Robinson v. Bodily*, 97 Idaho 199, 541 P.2d 623 (1975).

#### **Political Parties Construed.**

The reference to political parties is only to political parties in existence at the time of the last preceding general election, and not to newly formed political parties. *American Indep. Party in Idaho, Inc. v. Cenarrusa*, 92 Idaho 356, 442 P.2d 766 (1968).

#### **Decisions Under Prior Law Non-party Member.**

There was no provision of primary law which forbade political party from nominating one who was not member of such party, and such nomination did not create vacancy on such party ticket. *Sutphen v. Enking*, 39 Idaho 727, 230 P. 38 (1924).

**34-704. Declaration of candidacy.** — Any person legally qualified to hold such office is entitled to become a candidate and file his declaration of candidacy. Each political party candidate for precinct, state, district or county office shall file his declaration of candidacy in the proper office between 8 a.m., on the twelfth Monday preceding the primary election and 5 p.m., on the tenth Friday preceding the primary election. All political party candidates shall declare their party affiliation in their declaration of candidacy and shall be affiliated with a party at the time of filing. A candidate shall be deemed affiliated with the political party if the candidate submits a party affiliation form along with the declaration of candidacy to the filing official. The filing official shall reject any declaration of candidacy for partisan office in a primary election from candidates who are not affiliated with a political party. Candidates for nonpartisan office shall file during the period provided for in this section.

Candidates who file a declaration of candidacy under a party name and are not nominated at the primary election shall not be allowed to appear on the general election ballot under any other political party name, nor as an independent candidate.

Independent candidates shall file their declaration of candidacy in the manner provided in [section 34-708, Idaho Code](#).

### **History.**

[I.C., § 34-704](#), as added by 1971, ch. 5, § 3, p. 11; am. 1971, ch. 188, § 1, p. 867; am. 1972, ch. 46, § 4, p. 84; am. 1972, ch. 346, § 1, p. 1015; am. 1975, ch. 174, § 17, p. 469; am. 1976, ch. 60, § 3, p. 200; am. 1979, ch. 309, § 4, p. 833; am. 1983, ch. 213, § 6, p. 590; am. 1984, ch. 8, § 1, p. 12; am. 1984, ch. 173, § 3, p. 414; am. 1989, ch. 70, § 1, p. 111; am. 2003, ch. 48, § 10, p. 181; am. 2012, ch. 211, § 5, p. 571.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-704 was repealed. See Prior Laws, § 34-701.

## **Amendments.**

The 2012 amendment, by ch. 211, substituted “and shall be affiliated with a party at the time of filing” for “except candidates for nonpartisan office” at the end of the third sentence and added the last three sentences in the last paragraph.

## **Legislative Intent.**

Section 1 of S.L. 1984, ch. 173 read: “Statement of Legislative Findings. The Legislature recognizes that many factors impact decisions regarding legislative apportionment. In adoption of the provisions of this act, the Legislature was cognizant that apportionment is fundamental to good government. In all decisions implemented in this act, certain principles governed. The most important of these was achievement of one person, one vote, as mandated by the federal constitution and interpretations by federal courts. In addition, recognition of county boundaries, creation of compact and contiguous districts, preservation of historical socioeconomic relationships, and recognition of natural topographical barriers weighed heavily upon these deliberations. The Legislature has been particularly aware of the requirements of [Section 5, Article III, of the Constitution](#) of the State of Idaho. The necessary balance between principles of the United States Constitution and guarantees of the Idaho Constitution has been placed squarely before the Idaho Legislature. The resulting apportionment, contained herein, is a balance of these and other special criteria, noted in this statement as applicable.

“In certain districts, there exist such unique conditions, that deviation from the ideal of one person, one vote, seems not only warranted, but mandated. In Legislative District No. 1 composed of Bonner and Boundary Counties, these counties are bounded on three sides by other states and a foreign nation. No other combination of counties is possible which accomplishes representation of these populations. Similarly, Kootenai County, in Districts No. 2 and No. 3, has deviations from the ideal which may exceed the most desirable, but the county is given recognition through two districts entirely within its boundaries. Any combination with other counties would only serve to dilute the representation of Kootenai County as a separate and distinct unit.

“Benewah and Shoshone Counties are combined in a district without other counties based upon their traditional ties of economic and social interests.

“Four Legislative Districts, No. 5, No. 6, No. 7 and No. 8, illustrate legislative efforts to minimize deviations when it was possible without diluting representation. A floterial district concept is utilized in this area to achieve the representation to which the population total is entitled. The size of the floterial district is limited, however, to five counties, because inclusion of the ten counties north of the southern Idaho County boundary would create a district so large and cumbersome as to be difficult to represent. The diversity of interests thrown into a single district merely for the achievement of minimal deviation would then negate the legitimate representation of these interests.

“District No. 9, which is well below the ideal district size, nevertheless consists of four large and sparsely populated counties. While mathematical purity might be achieved by a combination of these and some northern counties, representation of like interests would be diluted.

“District No. 22 is well above the ideal district size, but represents a combination of counties very large in size, and without responsible alternatives. Bounded as it is by two states, Owyhee County with its sparsely populated expanse, warrants special consideration. Any combination of Owyhee County with another county than Elmore, would result in unnecessary and unwarranted dilution of the representation of the other county.

“District No. 23, composed of five counties of Butte, Clark, Custer, Jefferson and Lemhi, once again illustrates the problems of size and population density. These counties have natural similarities of economic and social interests. They are bounded by another state on one side and by the natural topographical limitation of a large wilderness area and imposing mountain range on the other. While their interests are similar enough to be amenable to good representation, further division or other combinations would only dilute good representation.

“Use of two floterial districts in the southeastern corner of the state achieves better representation because the counties included are similar in their socioeconomic traditions. The size of the resulting districts is not



excessive and the similarities of interests would make good representation a reasonable expectation. Further, flotal districts used here make it possible to represent individual counties, thereby maximizing county representation in the Legislature. Only through the use of a flotal district is Bingham County assured the representation to which its population would entitle it.

“While the concept of one person, one vote, has been preeminent in the accomplishment of this apportionment, another important factor has also been considered, and that is achievement of access to good representation. Each case of deviation from the ideal population size has been considered in light of the special circumstances which might warrant that deviation from the first principle, and the resulting enactment herein contained is a merger of these diverse interests and principles.”

### **Compiler’s Notes.**

Section 6 of S.L. 1984, ch. 173 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

### **Effective Dates.**

Section 5 of S.L. 1972, ch. 46 declared an emergency. Approved February 28, 1972.

Section 2 of S.L. 1984, ch. 8 declared an emergency. Approved February 24, 1984.

Section 5 of S.L. 1984, ch. 173 declared an emergency and made the act effective retroactively to November 1, 1983, except that the legislative districts as they existed for the purposes of the 1982 general election continued to exist for all necessary purposes of the Forty-seventh Legislature. Approved April 2, 1984.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

## **JUDICIAL DECISIONS**

**Cited in:** Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975); Hellar v. Cenarrusa, 106 Idaho 617, 682 P.2d 570 (1984).

**34-705. With whom declarations filed.** — (1) All candidates for county offices, whether political party candidates or independent candidates, and all political party candidates for precinct offices shall file their declarations of candidacy with the county clerk of their respective counties. All candidates for district, state and federal offices shall file their declarations of candidacy with the secretary of state.

(2) The secretary of state shall certify to the county clerks, within ten (10) days after the filing deadline, the names of the political party candidates who filed for federal, state and district offices and are qualified for placement on the ballot.

(3) The secretary of state shall certify the name of a candidate being appointed by the appropriate central committee pursuant to [section 34-714, Idaho Code](#), by no later than the next business day after the appointment is received in the secretary of state's office, if received after the certification of candidates to the county clerks under subsection (2) of this section.

### **History.**

[I.C., § 34-705](#), as added by 1971, ch. 5, § 4, p. 11; am. 1971 (E. S.), ch. 9, § 3, p. 20; am. 1976, ch. 60, § 4, p. 200; am. 2019, ch. 96, § 8, p. 344.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-705 was repealed. See Prior Laws, § 34-701.

### **Amendments.**

The 2019 amendment, by ch. 96, added the subsection (1) and (2) designators to the extant provisions of the section and added subsection (3); and substituted “for placement on the ballot” for “and by not later than the tenth day prior to the primary shall certify the names of political party candidates who have been appointed by central committees to fill vacancies

as provided by [section 34-714, Idaho Code](#)” at the end of subsection (2) Effective Dates.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

## **JUDICIAL DECISIONS**

**Cited in:** [Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 \(1975\).](#)

**34-706. Notification to parties.** — Within three (3) days after the deadline for filing declarations of political party candidacy the county clerk shall notify the county central committee of each political party of the candidates who have filed for county and precinct offices under the party name and are qualified.

Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the legislative district central committee of each political party of the legislative candidates who have filed under the party name and are qualified.

Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the state central committee of each political party of the candidates who have filed for federal and state offices under the party name and are qualified.

**History.**

**I.C., § 34-706**, as added by 1971, ch. 5, § 5, p. 11; am. 1971, ch. 188, § 2, p. 867; am. 1971 (E.S.), ch. 9, § 4, p. 20; am. 1976, ch. 60, § 5, p. 200; am. 1989, ch. 70, § 2, p. 111.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-706 was repealed. See Prior Laws, § 34-701.

**JUDICIAL DECISIONS**

**Cited in:** **Hellar v. Cenarrusa**, 106 Idaho 617, 682 P.2d 570 (1984).

**34-707. Party conventions.** — A state convention shall be held by each political party in each election year at a time and place determined by the state central committee. The state central committee chairman shall preside and cause notice to be given to each legislative district central committee and each county central committee at the earliest possible date.

Each state convention shall write and adopt rules and regulations governing the conduct of their respective conventions.

At their convention each political party may: (1) Adopt and write a party platform.

(2) Elect any desired officers not otherwise provided for by law.

(3) In the year of presidential elections (a) elect delegates to the national convention in the manner prescribed by national party rules; (b) elect a national committeeman and a national committeewoman; and (c) select presidential electors.

(4) Adopt rules, regulations and directives regarding party policies, practices and procedures.

### **History.**

1970, ch. 140, § 111, p. 351; am. 1971, ch. 5, § 6, p. 11; am. 1971 (E.S.), ch. 9, § 5, p. 20; am. 1973, ch. 122, § 1, p. 232; am. 1980, ch. 236, § 1, p. 524; am. 2003, ch. 94, § 1, p. 279.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-707 was repealed. See Prior Laws, § 34-701.

### **Effective Dates.**

Section 2 of S.L. 1980, ch. 236, declared an emergency and provided that the act should take effect on and after June 20, 1980.

**34-708. Independent candidates.** — (1) No person may offer himself as an independent candidate at the primary election.

(2) Any person who desires to offer himself as an independent candidate for federal, state, district, or county office may do so by complying strictly with the provisions of this section. In order to be recognized as an independent candidate, each such candidate must file with the proper officer as provided by [section 34-705, Idaho Code](#), a declaration of candidacy as an independent candidate, during the period specified in [section 34-704, Idaho Code](#). Such declaration must state that he is offering himself as an independent candidate, must declare that he has no political party affiliation, and must declare the office for which he seeks election. Each such declaration must be accompanied by a petition containing the following number of signatures of qualified electors: (a) One thousand (1,000) for any statewide office; (b) Five hundred (500) for any congressional district office; (c) Fifty (50) for any legislative district office; (d) Five (5) for any county office.

(3) Signatures on the petitions required in this section shall be verified in the manner prescribed in [section 34-1807, Idaho Code](#).

(4) If all of the requirements of this section have been met, the proper officer shall cause the name of each independent candidate who has qualified to be placed on the general election ballot, according to instructions of the secretary of state.

### **History.**

[I.C., § 34-708](#), as added by 1976, ch. 60, § 6, p. 200; am. 1979, ch. 309, § 5, p. 833; am. 1995, ch. 115, § 1, p. 385; am. 1996, ch. 28, § 24, p. 67; am. 2003, ch. 293, § 1, p. 795.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-708, which comprised 1933, ch. 16, § 8, p. 18; am. 1935, ch. 12, § 1, p. 27, was repealed by S.L. 1970, ch. 140, § 208. S.L. 1970, ch. 140, § 112 created a new § 34-708 which was repealed by S.L. 1971 (E.S.), ch. 9, § 9.



**34-708A. Independent candidates for president and vice-president.**

— Persons who desire to be independent candidates for the offices of president and vice-president, must file, prior to August 25 of the election year, declarations of candidacy as independent candidates. Such declarations must state that such persons are offering themselves as independent candidates and must declare that they have no political party affiliation. The declarations shall have attached thereto a petition signed by one thousand (1,000) qualified electors.

The candidates for president and vice-president shall be considered as candidates for one (1) office, and only one (1) such petition need be filed for both offices.

Signatures on the petitions required in this section shall be verified in the manner prescribed in [section 34-1807, Idaho Code](#), provided that the petition circulators are not required to be Idaho residents.

**History.**

[I.C., § 34-708A](#), as added by 1977, ch. 14, § 1, p. 30; am. 1979, ch. 309, § 6, p. 833; am. 1985, ch. 42, § 3, p. 87; am. 1987, ch. 262, § 2, p. 553; am. 1996, ch. 28, § 25, p. 67; am. 2011, ch. 285, § 6, p. 778.

**STATUTORY NOTES**

**Amendments.**

The 2011 amendment, by ch. 285, substituted “one thousand (1,000) qualified electors” for “a number of qualified electors not less than one percent (1%) of the number of votes cast in this state for presidential electors at the previous general election at which a president of the United States was elected” in the first paragraph and added “provided that the petition circulators are not required to be Idaho residents” at the end of the last paragraph.

**Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

**34-709, 34-710. Certification of candidates — Placing of names on ballot. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised I.C., §§ 34-709, 34-710, as added by 1953, ch. 36, § 1, p. 52, were repealed by S.L. 1970, ch. 140, § 208. The 1970 act created new §§ 34-709 and 34-710, which comprised S.L. 1970, ch. 140, §§ 113, 114; am. 1971, ch. 188, § 3, and which were repealed by S.L. 1971 (E.S.), ch. 9, § 9.

**34-711. Certification of candidates for president, vice president and presidential electors.** — The state chairman of each political party shall certify the names of the presidential and vice-presidential candidates and presidential electors to the secretary of state on or before September 1, unless a five (5) day extension is granted by the secretary of state, in order for them to appear on the general election ballot. The secretary of state shall certify such candidates to the county clerks at the same time as certification of political party candidates nominated for state and federal offices by the voters in the primary election.

**History.**

1970, ch. 140, § 115, p. 351; am. 1972, ch. 346, § 2, p. 1015; am. 1976, ch. 60, § 7, p. 200; am. 1984, ch. 131, § 3, p. 305; am. 1985, ch. 42, § 4, p. 87; am. 2003, ch. 94, § 2, p. 279.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-711, which comprised **I.C., § 34-711**, as added by 1953, ch. 36, § 1, p. 52, was repealed by S.L. 1970, ch. 140, § 208.

**34-711A. Certification of independent presidential electors. —** Independent candidates who have qualified for ballot status pursuant to section 34-708A, Idaho Code, shall certify the names of presidential electors to the secretary of state on or before September 1, in order for them to appear on the general election ballot. The secretary of state shall certify the independent presidential electors, and the independent candidates for president and vice-president, to the county clerks on or before September 7.

**History.**

I.C., § 34-711A, as added by 1977, ch. 14, § 2, p. 30; am. 1984, ch. 131, § 4, p. 305; am. 1985, ch. 42, § 5, p. 87.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Effective Dates.**

Section 7 of S.L. 1984, ch. 131 declared an emergency. Approved March 31, 1984.

Section 7 of S.L. 1985, ch. 42 declared an emergency. Approved March 11, 1985.

**34-712. Sample form for primary election ballots.** — The secretary of state shall provide the sample form of the primary election ballot to each of the county clerks no later than forty (40) days prior to the primary. The sample ballot shall contain the proper political party candidates to be voted upon within the county whose declarations were filed and certified in the office of the secretary of state with instructions for the placing of political party candidates seeking the political party nomination for county and precinct offices. If a county is within more than one (1) legislative district, the secretary of state shall provide a sample ballot for each legislative district which includes part of the county.

**History.**

1970, ch. 140, § 116, p. 351; am. 1970, ch. 231, § 4, p. 643; am. 1971, ch. 188, § 4, p. 867; am. 1971 (E.S.), ch. 9, § 6, p. 20; am. 1972, ch. 346, § 3, p. 1015; am. 1976, ch. 60, § 8, p. 200.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former §§ 34-712 to 34-714, which comprised **I.C., §§ 34-712 to 34-714**, as added by 1953, ch. 36, § 1, p. 52, were repealed by S.L. 1970, ch. 140 § 208.

**34-713. Preparation of primary ballots.** — Upon receipt of the sample ballot and instructions from the secretary of state, each county clerk shall print and prepare the official primary ballots for the forthcoming election. The printing of the ballots shall be a county expense and paid out of the county treasury except presidential primary ballots, which shall be paid for as provided in section 34-738, Idaho Code.

Each county clerk shall cause to be published on the earliest date possible the names of all the political party candidates who shall appear on the primary or presidential primary ballot. The names shall be listed alphabetically under each particular office title.

**History.**

1970, ch. 140, § 117, p. 351; am. 1975, ch. 174, § 13, p. 469; am. 1976, ch. 60, § 9, p. 200; am. 1979, ch. 309, § 7, p. 833; am. 2012, ch. 33, § 3, p. 103; am. 2015, ch. 292, § 5, p. 1166.

**STATUTORY NOTES**

**Cross References.**

Preparation, distribution and publication of sample ballots, § 34-2425.

Primary election ballots preparation, § 34-904.

Printing of ballots and ballot labels, § 34-2418.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-713 was repealed. See Prior Laws, § 34-712.

**Amendments.**

The 2012 amendment, by ch. 34, deleted “except presidential preference primary ballots which shall be paid for as provided in [section 34-739, Idaho Code](#)” from the end of the second sentence in the first paragraph and deleted “and the names of all political party candidates who shall appear on

the presidential preference primary ballot” from the end of the first sentence in the second paragraph.

The 2015 amendment, by ch. 292, added “except presidential primary ballots, which shall be paid for as provided in [section 34-738, Idaho Code](#)” at the end of the first paragraph; and, in the first sentence of the second paragraph, deleted “in May” following “date possible” and inserted “or presidential primary”.

**Effective Dates.**

Section 15 of S.L. 2012, ch. 33 declared an emergency. Approved March 1, 2012.

**34-714. Filling vacancies in slate of political party candidates occurring prior to primary election.** — (1) Vacancies that occur before the primary election in the slate of candidates of any political party because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate, shall be filled in the following manner if only one (1) candidate declared for that particular office:

- (a) By the county central committee if the vacancy occurs for the office of precinct committeeman or for a county office.
- (b) By the legislative district central committee if the vacancy occurs for the office of state representative or state senator.
- (c) By the state central committee if the vacancy occurs for a federal or state office.

The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.

Any political party candidate so appointed by the proper central committee must, in order to have his name on the primary ballot, file a declaration of candidacy and pay the required filing fee.

(2) No central committee shall fill any vacancy which occurs within ten (10) days prior to the primary election. Vacancies which occur during this ten (10) day period because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate shall be filled according to the provisions of [section 34-715, Idaho Code](#).

(3) Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled.

### **History.**

1970, ch. 140, § 118, p. 351; am. 1971 (E.S.), ch. 9, § 7, p. 20; am. 1975, ch. 21, § 3, p. 30; am. 1976, ch. 60, § 10, p. 200; am. 1989, ch. 70, § 3, p. 111; am. 1996, ch. 28, § 26, p. 67; am. 1999, ch. 222, § 1, p. 588.



## STATUTORY NOTES

### **Prior Laws.**

Former § 34-714 was repealed. See Prior Laws, § 34-712.

## JUDICIAL DECISIONS

**Cited in:** [Hellar v. Cenarrusa, 106 Idaho 617, 682 P.2d 570 \(1984\).](#)

**34-715. Filling of vacancies occurring before or after primary election.** — Vacancies that occur during the ten (10) day period before a primary election, or after the primary election but at least ten (10) days before the general election in the slate of candidates of any political party, except candidates for precinct committeeman, shall be filled in the following manner:

(1) By the county central committee if it is a vacancy by a candidate for a county office.

(2) By the legislative district central committee if it is a vacancy by a candidate for the state legislature.

(3) By the state central committee if it is a vacancy by a candidate for a federal or a state office.

The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.

Any political party candidate so appointed by the proper central committee must, in order to have his name on the general ballot, file a declaration of candidacy and pay the required filing fee.

Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled.

### **History.**

1970, ch. 140, § 119, p. 351; am. 1972, ch. 346, § 4, p. 1015; am. 1976, ch. 60, § 11, p. 200; am. 1977, ch. 21, § 1, p. 43; am. 1983, ch. 213, § 7, p. 590; am. 1996, ch. 28, § 27, p. 67; am. 1999, ch. 222, § 2, p. 588.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 5 of S.L. 1972, ch. 346 declared an emergency. Approved March 31, 1972.

Section 29 of S.L. 1996, ch. 28 declared an emergency. Became law without the governor's signature, February 15, 1996.

### **JUDICIAL DECISIONS**

**Cited in:** Hansen v. Morgan, 582 F.2d 1214 (9th Cir. 1978).

**34-716. Vacancies of candidates for nonpartisan offices occurring before general election not filled — Exceptions — Judicial offices. — (1)**

All vacancies of candidates for nonpartisan offices that occur after the primary election but before the general election, except vacancies in the offices of nominated candidates for judicial office which shall be filled as provided in this section, shall not be filled.

(2) If a candidate for judicial office has received a majority of the votes cast for the office at the primary election, he shall be deemed elected as provided by [section 34-1217, Idaho Code](#). Thereafter, if the judge-elect dies, moves from the state, or otherwise becomes ineligible to serve in the judicial office, the secretary of state shall declare that a vacancy exists in the judicial office, but that no other candidate for the office will be offered at the general election. The vacancy shall be filled as provided by law, as if the judge-elect had already assumed office.

(3) If three (3) or more candidates sought a judicial office at the primary election, and no candidate for the judicial office received a majority of the votes cast for the office at the primary election, and either of the candidates certified to be a nominee at the general election dies, moves from the state, or otherwise becomes ineligible to serve in the judicial office, the secretary of state shall cause the name or names of the candidate or candidates receiving the next highest number of votes cast at the primary election after the two (2) candidates certified, to be certified as nominees for the judicial office at the general election, so that two (2) candidates shall be offered for each judicial office to be filled. In the event only one (1) vacancy on the general election ballot is to be filled by the procedure outlined in this subsection, and there exists a tie among two (2) or more judicial candidates receiving the next highest number of votes, such candidates, or their personal designees, shall meet in the office of the secretary of state at a time fixed by him upon ten (10) days written notice to such interested candidates, or their designees, and a candidate to fill each such vacancy on the general election ballot shall be selected by lot from the candidates receiving the same number of votes at the primary election. The secretary of state shall cause the name of the persons so selected to appear on the general election ballot.

**History.**

1970, ch. 140, § 120, p. 351; am. 1972, ch. 333, § 1, p. 841.

**STATUTORY NOTES****Cross References.**

Secretary of state, § 67-901 et seq.

**Effective Dates.**

Section 3 of S.L. 1972, ch. 333 declared an emergency. Approved March 27, 1972.

**34-717. Withdrawal of candidacy.** — (1) A candidate for nomination or candidate for election to a partisan office may withdraw from the election by filing a notarized statement of withdrawal with the officer with whom his declaration of candidacy was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. The filing officer shall immediately notify the proper central committee of the party, if any, of the individual withdrawing. A candidate may not withdraw later than forty-five (45) days before an election, except in the case of a primary election, when the deadline shall be no later than the eighth Friday preceding the primary election, or a general election, when the deadline shall be no later than September 7. Filing fees paid by the candidate shall not be refunded.

(2) Any candidate who has filed a statement of withdrawal pursuant to this section shall not be allowed to be appointed to fill a vacancy unless such vacancy occurs because of the death of a previous candidate.

### **History.**

**I.C., § 34-717**, as added by 1983, ch. 213, § 8, p. 590; am. 1999, ch. 222, § 3, p. 588; am. 2011, ch. 11, § 12, p. 24; am. 2015, ch. 155, § 1, p. 545.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-717, which comprised S.L. 1970, ch. 231, § 6, was repealed by S.L. 1972, ch. 333, § 2.

### **Amendments.**

The 2011 amendment, by ch. 11, substituted “election to a partisan office” for “election to an office” in the first sentence in the first paragraph

The 2015 amendment, by ch. 155, added the subsection designations and inserted “primary election, when the deadline shall be no later than the eighth Friday preceding the primary election, or a” in the next-to-last sentence in subsection (1).

**Effective Dates.**

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

**34-718 — 34-722. Filling of vacancies after nomination for judicial offices. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1970, ch. 231, §§ 7 to 11, were repealed by S.L. 1972, ch. 333, § 2.



## **34-723 — 34-730. [Reserved.]**

**34-731. Presidential primary.** — (1) In years in which a president of the United States is to be nominated and elected, a presidential primary shall be held at which voters may express their choice of candidate for nomination by a political party for president. The presidential primary shall be held on the second Tuesday in March in each presidential election year.

(2) Participation in a presidential primary by a political party shall be optional, and nothing in this chapter shall be construed as mandating a party's participation in a presidential primary. Any party that intends to participate in a presidential primary shall notify the secretary of state's office no later than the last Tuesday in the November prior to the presidential primary.

### **History.**

I.C., § 34-731, as added by 2015, ch. 292, § 6, p. 1166.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-731, Presidential preference vote, which comprised 1975, ch. 174, § 1, p. 469; am. 1979, ch. 309, § 8, p. 833; am. 2010, ch. 185, § 7, p. 382, was repealed by S.L. 2012, ch. 33, § 4, effective March 1, 2012.

**34-732. Candidates.** — The name of any candidate for a political party nomination for president of the United States shall be printed on the ballots only if the candidate files with the secretary of state a declaration of candidacy accompanied by a one thousand dollar (\$1,000) filing fee not less than ninety (90) days prior to the presidential primary.

**History.**

I.C., § 34-732, as added by 2015, ch. 292, § 6, p. 1166.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-732, Selection of candidates for nomination in presidential primary, which comprised 1975, ch. 174, § 2, p. 469; am. 2007, ch. 202, § 2, p. 620; am. 2010, ch. 185, § 8, p. 382; am. 2011, ch. 285, § 7, p. 778, was repealed by S.L. 2012, ch. 33, § 5, effective March 1, 2012.

**34-733. Removal from ballot.** — In the event the secretary of state is informed of a candidate's death, incapacity or withdrawal from candidacy, the secretary of state may remove the name of such candidate from the ballot, provided however, that no candidate's name shall be removed within the forty-five (45) days preceding the presidential primary.

**History.**

I.C., § 34-733, as added by 2015, ch. 292, § 6, p. 1166.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-733, Notification to candidates — No affidavit of candidacy required, which comprised 1975, ch. 174, § 3, p. 469; am. 1983, ch. 213, § 9, p. 590, was repealed by S.L. 2012, ch. 33, § 6, effective March 1, 2012.

**34-734. Voting.** — At a presidential primary, qualified electors may vote for one (1) candidate from among the candidates of one (1) political party only in a manner consistent with the provisions of section 34-904A, Idaho Code.

**History.**

I.C., § 34-734, as added by 2015, ch. 292, § 6, p. 1166.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-734, Voting in presidential primary, which comprised 1975, ch. 174, § 4, p. 469, was repealed by S.L. 2012, ch. 33, § 7, effective March 1, 2012.

**34-735. Presidential primary — Results.** — Upon completion of the state canvass for the presidential primary, the secretary of state shall certify to the state chair of each political party participating in the presidential primary the number of votes received by each candidate of that party. A winner shall be declared as prescribed by rule of the state and national party.

**History.**

I.C., § 34-735, as added by 2015, ch. 292, § 6, p. 1166.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-735, Candidate's list of proposed delegates to national convention, which comprised 1975, ch. 174, § 5, p. 469, was repealed by S.L. 2012, ch. 33, § 8, effective March 1, 2012.

**34-736. Delegates to the national convention.** — Upon receiving the results of the presidential primary pursuant to section 34-735, Idaho Code, each party participating in the presidential primary shall select, according to national and state party rules, as many delegates and alternates to the national party convention as are allotted to it by the national committee of that party.

**History.**

I.C., § 34-736, as added by 2015, ch. 292, § 6, p. 1166.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-736, Delegates to national convention, which comprised 1975, ch. 174, § 6, p. 469, was repealed by S.L. 2012, ch. 33, § 9, effective March 1, 2012.

**34-737. Conduct of election.** — Insofar as practicable, and where the provisions of this chapter do not specifically indicate otherwise, the presidential primary shall be conducted and canvassed in the manner provided by law for the conduct and canvassing of state primary elections.

**History.**

I.C., § 34-737, as added by 2015, ch. 292, § 6, p. 1166.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-737, Uncommitted delegates, which comprised 1975, ch. 174, § 7, p. 469, was repealed by S.L. 2012, ch. 33, § 10, effective March 1, 2012.

**34-738. Costs of presidential primary.** — (1) Whenever a presidential primary is held as provided by this chapter, the state of Idaho shall assume all costs related to the presidential primary, including publication of legal notice and ballot preparation. The county clerk shall determine the costs and file a certified claim, which shall be examined, allowed and paid as other claims against the state are paid.

(2) The costs of any other election held simultaneous to the presidential primary shall be covered in the manner elsewhere prescribed by law.

**History.**

I.C., § 34-738, as added by 2015, ch. 292, § 6, p. 1166.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-738, Conduct of election, which comprised 1975, ch. 174, § 8, p. 469, was repealed by S.L. 2012, ch. 33, § 11, effective March 1, 2012.



Idaho Code 34-739

**34-739. Costs of presidential preference primary notice and ballots.  
[Repealed.]**

Repealed by S.L. 2012, ch. 33, § 12, effective March 1, 2012.

**History.**

1975, ch. 174, § 9, p. 469; am. 1979, ch. 309, § 9, p. 833.

**34-740. Rules.** — The secretary of state as chief election officer may adopt such rules as are necessary to facilitate the operation, accomplishment and purpose of this chapter.

**History.**

1975, ch. 174, § 10, p. 469; am. 2015, ch. 292, § 7, p. 1166.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2015 amendment, by ch. 292, deleted “and regulations” from the section heading and within the text and substituted “this chapter” for “this act”.



## **CHAPTER 8**

### **REGISTRATION OF ELECTORS**

Section.

34-801 — 34-818. [Repealed.]

**34-801 — 34-818. Registrars and deputies — Appointment, notices, delivery of register. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This chapter, which comprised 1890-1891, p. 57, §§ 45, 47; reen. 1899, p. 33, §§ 36, 38; reen. R.C., § 400; am. R.C., § 398; reen. 1917, ch. 44, §§ 6, 8, p. 102; C.L., §§ 398, 400; C.S., §§ 566, 568; 1931, ch. 220, §§ 1 to 16; I.C.A., §§ 33-701 to 33-718; am. 1945, ch. 42, § 1, p. 55; am. 1949, ch. 16, § 1, p. 18; am. 1951, ch. 89, § 1, p. 161; am. 1955, ch. 122, § 1, p. 249; am. 1963, ch. 358, § 2, p. 1026; am. 1965, ch. 263, § 1, p. 668; am. 1966 (3rd E.S.), ch. 5, § 25, p. 16, was repealed by S.L. 1970, ch. 140, § 209. For present comparable provisions, see § 34-404 et seq.



## **CHAPTER 9**

### **BALLOTS**

#### **Section.**

34-901. Official election ballot identification.

34-902. County commissioners to provide sufficient ballots and ballot boxes for each polling place at all elections.

34-903. Secretary of state to prescribe form and contents of all ballots and related documents.

34-903A. Name on ballot.

34-904. Primary election ballots.

34-904A. Eligibility to vote in primary elections.

34-905. Nonpartisan ballots for election of justices of supreme court and district judges.

34-905A. Nonpartisan ballots for election of highway district commissioners — Plurality required for election.

34-906. Ballots for general elections.

34-907 — 34-907B. [Repealed.]

34-908. Each ballot to carry official election ballot identification on outside — Marking of ballot by voter.

34-909. General election sample ballots forwarded to counties by secretary of state.

34-910. Duty of county clerk to furnish sufficient ballots to each voting precinct — Record of number of ballots printed and furnished.

34-911. County clerk to prepare full instructions for the guidance of voters at elections.

34-912. Procedure for correction of ballots when vacancy occurs after printing — Notice.

34-913, 34-914. Delivery of supplies — Instruction cards and sample ballots. [Repealed.]



**34-901. Official election ballot identification.** — (1) The county clerk shall provide that all election ballots are identified as official. Each ballot shall have upon its face the date and year of the election in which it is used and the words “Official Election Ballot.”

(2) The clerk in a county that utilizes optical scan ballots shall ensure that: (a) The official election ballot identification is printed on each ballot issued; and (b) Each ballot contains a unique marking to prevent duplication of official election ballots.

(3) The clerk in a county that utilizes paper or other ballots shall provide an official election stamp of such character or device and of such material as the board of county commissioners may select. In the event such stamp is lost, destroyed or unavailable upon election day, the distributing clerk shall initial each ballot and write “stamped” upon the ballot in the appropriate place.

**History.**

1970, ch. 140, § 121, p. 351; am. 2013, ch. 285, § 2, p. 735.

**STATUTORY NOTES**

**Cross References.**

Ballots, printing, form, § 34-2414.

Penalties for tampering with ballots or defacing supplies, §§ 18-2316, 18-2317.

Voting by absentee ballot, § 34-1001 et seq.

**Prior Laws.**

The following former sections were repealed by S.L. 1970, ch. 140, § 210: 34-901. (1890-1891, p. 57, § 53; reen. 1899, p. 33, § 44; reen. R.C. & C.L., § 402; C.S., § 570; I.C.A., § 33-801; am. 1944 (1st E.S.), ch. 2, § 8, p. 4; am. 1949, ch. 86, § 3, p. 149.) 34-902. (1890-1891, p. 57, § 54; reen. 1899, p. 38, § 45; reen. R.C. & C.L., § 403; C.S., § 571; I.C.A., § 33-802; am. 1951, ch. 34, § 1, p. 45.) 34-903. (1890-1891, p. 57, §§ 55, 56; reen.

1899, p. 33, §§ 46, 47; reen. R.C. & C.L., § 404; C.S., § 572; I.C.A., § 33-803; am. 1966 (3rd E.S.), ch. 5, § 26, p. 16.) 34-904. (1890-1891, p. 57, § 57; reen. 1899, p. 33, § 48; am. 1903, p. 354, § 1; am. 1905, p. 311, § 1; am. R.C., § 405; am. 1913, ch. 100, p. 416; am. 1917, ch. 93, § 1, p. 318; reen. C.L., § 405; am. 1919, ch. 169, p. 540; C.S., § 573; I.C.A., § 33-804; am. 1941, ch. 49, § 1; p. 104; am. 1944 (1st E.S.), ch. 2, § 9, p. 4; am. 1949, ch. 141, § 1, p. 247; am. 1951, ch. 23, § 1, p. 34; am. 1953, ch. 54, § 1, p. 73; am. 1967, ch. 360, § 9, p. 1011.) Amendments.

The 2013 amendment, by ch. 285, substituted “ballot identification” for “stamp” in the section heading and rewrote the section, which formerly read: “The county clerk shall provide for an official election stamp of such character or device, and of such material as the board of county commissioners may select. Each stamp shall have upon its face the date and year of the election in which it is used and the words ‘Official Election Ballot.’ In the event such stamp is lost, destroyed or unavailable upon election day, the distributing clerk shall initial each ballot and write ‘stamped’ upon the ballot in the appropriate place.”

**34-902. County commissioners to provide sufficient ballots and ballot boxes for each polling place at all elections.** — The board of county commissioners shall authorize that a suitable number of ballots be printed for each polling place. The county clerk shall cause such ballots to be printed upon receiving final instructions from the secretary of state, and the cost shall be paid from the county treasury. The board of county commissioners shall authorize the printing of ballots in the same manner for special elections when such special election is ordered by the governor or provided by law.

The board of county commissioners shall also provide a suitable number of ballot boxes for each polling place within the county, and shall have complete authority to determine the specifications for such ballot boxes.

**History.**

1970, ch. 140, § 122, p. 351; am. 1975, ch. 174, § 14, p. 469; am. 1979, ch. 309, § 10, p. 833; am. 2011, ch. 11, § 13, p. 24.

**STATUTORY NOTES**

**Cross References.**

Printed matter and supplies for the proper use of voting machines and vote tally systems, § 34-2414.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-902 was repealed. See Prior Laws, § 34-901.

**Amendments.**

The 2011 amendment, by ch. 11, deleted “At its regular meeting in March” from the beginning of the first sentence in the first paragraph.

**Effective Dates.**

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

## **JUDICIAL DECISIONS**

### Decisions Under Prior Law Analysis

Ballots as evidence.

Duties of commissioners.

#### **Ballots as Evidence.**

In order to introduce ballots in evidence in election contest, party offering them must show that the law governing protection and preservation of ballots has been complied with. *Viel v. Summers*, 35 Idaho 182, 209 P. 454 (1922).

#### **Duties of Commissioners.**

County auditor (now commissioner) in preparing official ballots acts ministerially only and must place upon the ballot in the proper column names of all candidates whose nominations have been duly certified to him. *Miller v. Davenport*, 8 Idaho 593, 70 P. 610 (1902); *Fuller v. Corey*, 18 Idaho 558, 110 P. 1035 (1910).

**34-903. Secretary of state to prescribe form and contents of all ballots and related documents.** — (1) The secretary of state shall, in a manner consistent with the election laws of this state, prescribe the form for all ballots, absentee ballots, diagrams, sample ballots, ballot labels, voting machine labels or booklets, certificates, notices, declarations of candidacy, affidavits of all types, lists, applications, poll books, tally sheets, registers, rosters, statements and abstracts if required by the election laws of this state.

(2) The secretary of state shall prescribe the arrangement of the matter to be printed on each kind of ballot and label, including: (a) The placement and listing of all offices, candidates and issues upon which voting is statewide, which shall be uniform throughout the state.

(b) The listing of all other candidates required to file with him, and the order of listing all offices and issues upon which voting is not statewide.

(3) The names of candidates for legislative or special district offices shall be printed only on the ballots and ballot labels furnished to voters of such district.

(4) The names of candidates which appear on election ballots for federal, state, county and city offices shall be rotated in the manner determined by the secretary of state. The order of candidates for office in other elections shall be determined by applying the first letter of each candidate's last name to a random alphabet selected prior to each election by the secretary of state.

(5) No candidate's name may appear on a ballot for more than one (1) partisan office or one (1) judicial office, except that a candidate for precinct committeeman may seek one (1) additional office upon the same ballot. The provisions of this subsection shall not apply to the election of electors of president and vice-president of the United States.

### **History.**

1970, ch. 140, § 123, p. 351; am. 1971, ch. 189, § 1, p. 870; am. 1987, ch. 313, § 1, p. 656; am. 2011, ch. 285, § 8, p. 778; am. 2012, ch. 211, § 6, p. 571; am. 2015, ch. 282, § 5, p. 1147.

## STATUTORY NOTES

### **Cross References.**

Preparation of ballots and ballot labels, §§ 34-713, 34-904, 34-911, 34-2418, 34-2419 and 34-2425.

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-903 was repealed. See Prior Laws, § 34-901.

### **Amendments.**

The 2011 amendment, by ch. 285, in subsection (4), substituted “The names of candidates which appear on election ballots for federal, state, county and city offices” for “The names of all candidates which appear on any election ballot” and added the last sentence.

The 2012 amendment, by ch. 211, inserted “partisan” preceding “office” in the first sentence in subsection (5).

The 2015 amendment, by ch. 282, inserted “or one (1) judicial office” in the first sentence in subsection (5).

### **Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

Section 9 of S.L. 2015, ch. 282 declared an emergency. Approved April 6, 2015.

## JUDICIAL DECISIONS

Decisions Under Prior Law

Analysis

One ticket only.

Write-in votes.

### **One Ticket Only.**

Only one ticket under the recognized name of a political party may be placed upon the official ballot. *Williams v. Lewis*, 6 Idaho 184, 54 P. 619 (1898), overruled on other grounds, *Stein v. Morrison*, 9 Idaho 426, 75 P. 246 (1904).

### **Write-in Votes.**

Write-in votes for office inserted in blank space under Republican column were required to be counted along with write-in votes inserted in blank column to determine total votes cast for write-in candidates for office. *McCall v. Martin*, 74 Idaho 277, 262 P.2d 787 (1953).

## **RESEARCH REFERENCES**

**A.L.R.** — Validity, construction, and application of state statutory requirements concerning placement of independent candidate for President of the United States on ballot. 33 A.L.R.6th 513.

**34-903A. Name on ballot.** — Should it appear to the secretary of state or county clerk that a person has filed as a candidate and that such person has changed their name and has changed their name to words that convey or attempt to convey a political message, the secretary of state or county clerk shall make an inquiry to determine: (i) if such person has changed their name; and (ii) if such name contains words that convey a political message to voters on the ballot; and (iii) if an explanation on the ballot would clarify the ballot and would assist in eliminating voter confusion. If the secretary of state or county clerk finds affirmatively that all three (3) criteria have been met, the secretary of state or county clerk shall be required to note on the ballot immediately following the name that appears to be a political proposition the following statement in parentheses: (A person, formerly known as .....), inserting in the blank within the parentheses the name by which the candidate who changed their name was formerly known.

**History.**

I.C., § 34-903A, as added by 2008, ch. 408, § 2, p. 1124.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

Section 1 of S.L. 2008, ch. 408 provided “Legislative Findings. The Legislature finds that: “(1) The state has a compelling state interest in the matters described herein; “(2) The protection of the integrity and fairness of the ballot is integral to the protection of the right to vote; “(3) Ballots serve primarily to elect candidates not as fora for political expression; “(4) Neither the state, a political party, nor a candidate has the right to send a particularized political message on the ballot; “(5) Permitting candidates to convey or place a political message on the ballot by use of a changed name without explanation undermines ballot integrity by transforming the ballot from a means of choosing candidates to a billboard for political advertising; “(6) To mix names of candidates with apparent political propositions is



confusing to voters and will directly affect the integrity of the ballot, cause spoiled ballots due to double votes for the same office and potentially produce a result not intended by voters; “(7) It is necessary for the purpose of eliminating confusion to clarify the ballot and to advise voters that the vote to be cast is for a person and not a political proposition; and “(8) As a result of all of the above, it is appropriate to clarify the ballot with an explanation that voters are casting a vote for a person and not a political proposition.”

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 3 of S.L. 2008, ch. 408 declared an emergency. Approved April 11, 2008.

## **RESEARCH REFERENCES**

**A.L.R.** — Validity, construction, and application of state requirements for placement of independent candidates for United States senate on ballot. [59 A.L.R.6th 111](#).

**34-904. Primary election ballots.** — (1) There shall be a separate primary election ballot for each political party upon which its ticket shall be printed; however, a county may use a separate ballot for the office of precinct committeeman. All candidates who have filed their declarations of candidacy and are subsequently certified shall be listed under the proper office titles on their political party ticket. The secretary of state shall design the primary election ballot to allow for write-in candidates when needed.

(2) The office titles shall be listed in order beginning with the highest federal office and ending with precinct offices. The secretary of state has the discretion and authority to arrange the classifications of offices as provided by law.

(3) It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the federal or statewide offices on the ballot if no more than one (1) candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify to the county clerk the names of candidates for that party for the general election ballot only.

### **History.**

1970, ch. 140, § 124, p. 351; am. 1971, ch. 189, § 2, p. 870; am. S.L. 1972, ch. 130, § 1, p. 259; am. 1983, ch. 213, § 10, p. 590; am. 2001, ch. 272, § 2, p. 993; am. 2011, ch. 319, § 7, p. 929; am. 2012, ch. 57, § 1, p. 157; am. 2020, ch. 69, § 3, p. 157.

## **STATUTORY NOTES**

### **Cross References.**

No write-ins shall be allowed for judicial office, § 34-702.

Preparation and distribution of sample ballots, § 34-2425.

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-904 was repealed. See Prior Laws, § 34-901.

### **Amendments.**

The 2011 amendment, by ch. 319, added the subsection designations and, in subsection (1), substituted “There shall be a single primary election ballot on which the complete ticket of each political party shall be printed;” for “There shall be a single primary election ballot on which the complete ticket of each political party shall be printed” and deleted the former second sentence, which read “Each political ticket shall be separated from the others by a perforated line that will enable the elector to detach the ticket of the political party voted from those remaining.”

The 2012 amendment, by ch. 57, deleted “only” preceding “its ticket” in the first sentence of subsection (1).

The 2020 amendment, by ch. 69, substituted “when needed” for “under each office title” at the end of subsection (1).

### **Legislative Intent.**

Section 1 of S.L. 2011, ch. 319 provided: “Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party’s candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the **First** and **Fourteenth Amendments** to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections.”

### **Effective Dates.**

Section 11 of S.L. 1983, ch. 213 declared an emergency. Approved April 13, 1983.

Section 2 of S.L. 2012, ch. 57 declared an emergency. Approved March 13, 2012.

## **JUDICIAL DECISIONS**

### **Constitutionality.**

This section was declared unconstitutional as applied to the Idaho Republican Party, because the state's use of an open primary system to determine nominees for the general election violated the Republican Party's **First Amendment** right to freedom of association by permitting substantial numbers of non-party members to cross over and participate in the Republican Party's selection of its nominees. **Idaho Republican Party v. Ysursa**, 765 F. Supp. 2d 1266 (D. Idaho 2011).

**Cited in:** **Robinson v. Bodily**, 97 Idaho 199, 541 P.2d 623 (1975).

## **RESEARCH REFERENCES**

**A.L.R.** — Challenges to write-in ballots and certification of write-in candidates. **75 A.L.R.6th 311**.

**34-904A. Eligibility to vote in primary elections.** — (1) Except as provided in subsection (2) of this section, an elector who has designated a party affiliation shall be allowed to vote only in the primary or presidential primary election of the political party for which such an elector is so registered.

(2) A political party qualified to participate in elections pursuant to [section 34-501, Idaho Code](#), may, no later than the last Tuesday in the November prior to a primary or presidential election, notify the secretary of state in writing that the political party elects to allow, in addition to those electors who have registered with that political party, any of the following to vote in such party's primary or presidential primary election:

(a) Electors designated as “unaffiliated”;

(b) Electors registered with a different political party qualified to participate in elections pursuant to [section 34-501, Idaho Code](#). In the event a state chairman of a political party elects to allow electors to vote in that party's primary or presidential primary election pursuant to this paragraph (b), the state chairman shall identify which political parties' registrants are allowed to vote in such primary or presidential primary election.

(3) In the event that more than one (1) political party allows “unaffiliated” electors to vote in their party's primary or presidential primary election, an “unaffiliated” elector shall designate which political party's primary or presidential primary election the elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in [section 34-437A, Idaho Code](#).

(4) In the event no more than one (1) political party allows “unaffiliated” electors to vote in their party's primary or presidential primary election, an “unaffiliated” elector may designate that political party's primary or presidential primary election as the election the elector chooses to vote in

by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in [section 34-437A, Idaho Code](#).

(5) An “unaffiliated” elector having declared such designation as provided for in subsection (3) or (4) of this section shall not be permitted to vote in the primary or presidential primary election of any other party held on that primary or presidential primary election date.

(6) If an “unaffiliated” elector does not declare a choice of political party's primary or presidential primary election ballot, the elector shall not be permitted to vote in any political party's primary or presidential primary election but shall receive a nonpartisan ballot when such a ballot is available.

(7) In the event that one (1) or more political parties allow electors affiliated with a different political party to vote in their primary or presidential primary election pursuant to this section, an elector affiliated with a different political party shall declare to the poll worker or other appropriate election personnel in which primary or presidential primary election ballot such elector wishes to vote. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in [section 34-437A, Idaho Code](#).

Provided that all other provisions of this act are complied with, nothing in this section shall be construed to prohibit an elector designated as “unaffiliated” from voting in the primary or presidential primary election of a different party held in subsequent years. Notwithstanding any other provision of this act, if a political party allows “unaffiliated” electors to vote in that political party's primary or presidential primary election pursuant to this section, a vote by an “unaffiliated” elector in such primary or presidential primary election shall not change or affect the elector's “unaffiliated” designation.

### **History.**

[I.C., § 34-904A](#), as added by 2011, ch. 319, § 8, p. 929; am. 2015, ch. 292, § 8, p. 1166.

## STATUTORY NOTES

### Cross References.

Secretary of state, § 67-901 et seq.

### Prior Laws.

Former § 34-904A, Provision for legislative and representative districts on ballot, which comprised S.L. 1966 (3rd E.S.), ch. 5, § 28; am. 1967, ch. 360, § 10, p. 1011, was repealed by S.L. 1970, ch. 140, § 210.

Another former § 34-904A, which comprised S.L. 1965 (E.S., ch. 1, § 10, p. 5, was repealed by S.L. 1966 (3rd E.S.), ch. 5, § 28.

### Amendments.

The 2015 amendment, by ch. 292, inserted “presidential primary” or “or presidential primary” following “primary” throughout the section; substituted “the last Tuesday in the November” for “one hundred eighty (180) days” in the introductory paragraph in subsection (2); and inserted “when such a ballot is available” at the end of subsection (6).

### Legislative Intent.

Section 1 of S.L. 2011, ch. 319 provided: “Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party’s candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the **First** and **Fourteenth Amendments** to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections.”

### Compiler’s Notes.

The term “this act” in the last paragraph refers to S.L. 2011, Chapter 319, which is presently codified as §§ 34-308, 34-404, 34-406, 34-411, 34-411A, 34-904, 34-904A, 34-1002, and 34-1003. The reference probably should be to “this chapter,” being chapter 9, title 34, Idaho Code.



**34-905. Nonpartisan ballots for election of justices of supreme court and district judges.** — There shall be a single nonpartisan ballot for the election of justices of the supreme court and district judges. The names of all candidates for each office shall be listed under the proper office title by the secretary of state. A similar ballot shall be prepared for any general election, whenever it shall be necessary to conduct an election for judicial office.

The ballot for each judicial office shall contain the words: “To succeed (Judge, Justice) . . . . .,” inserting the name of the[,] or of each[,] incumbent candidate for re-election, or retiring judge or justice as the case may be, whose successor is to be elected in that year followed by the words: “Vote for One,” followed by the names of the candidates for that particular office.

**History.**

1970, ch. 140, § 125, p. 351; am. 1970, ch. 231, § 5, p. 643; am. 1971 (E.S.), ch. 9, § 8, p. 14.

**STATUTORY NOTES**

**Cross References.**

No write-ins shall be allowed for judicial office, § 34-702.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-905, which comprised 1927, ch. 77, § 1, p. 96; I.C.A., § 33-805; am. 1966 (3rd E.S.), ch. 5, § 29, p. 16, was repealed by S.L. 1970, ch. 140, § 210.

**Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

Commas were bracketed into the last paragraph of this section by the compiler to make the section more readable.

**34-905A. Nonpartisan ballots for election of highway district commissioners — Plurality required for election.** — There shall be a single nonpartisan ballot for the election of highway district commissioners in each highway district. The ballot shall designate the highway district commissioners subdistrict and the names of all candidates for that office shall be listed thereon. The ballot shall also contain the words: “Vote for One,” followed by the names of the candidates for the office. The candidate with the most votes shall be declared the successful candidate.

**History.**

I.C., § 34-905A, as added by S.L. 1972, ch. 345, § 2, p. 1013.

**STATUTORY NOTES**

**Effective Dates.**

Section 3 of S.L. 1972, ch. 345 provided the act should take effect on and after July 1, 1972.

**34-906. Ballots for general elections.** — (1) There shall be a single general election ballot on which the complete ticket of each political party shall be printed. Each political party ticket shall include that party's nominee for each particular office. The secretary of state shall design the general election ballot to allow for write-in candidates when needed.

(2) The office titles shall be listed in order beginning with the highest federal office. The secretary of state has the discretion and authority to arrange the above classifications of offices as provided by law.

(3) At any general election at which the electors are to vote upon constitutional amendments or other issues, the secretary of state shall provide separate general election ballot forms on which such amendments and issues shall be printed.

**History.**

1970, ch. 140, § 126, p. 351; am. 1971, ch. 189, § 3, p. 870; am. 1977, ch. 12, § 1, p. 24; am. 2020, ch. 69, § 4, p. 157.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-906, which comprised I.C.A., § 33-805-A, as added by 1933, ch. 36, § 1, p. 48; am. 1955, ch. 192, § 1, p. 414, was repealed by S.L. 1970, ch. 140, § 210.

**Amendments.**

The 2020 amendment, by ch. 69, added the subsection designators and substituted “when needed” for “under each office title” at the end of subsection (1).

**JUDICIAL DECISIONS**

**Cited in:** [Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 \(1975\).](#)

## **RESEARCH REFERENCES**

**A.L.R.** — Validity, construction, and application of state statutory requirements concerning placement of independent candidate for President of the United States on ballot. [33 A.L.R.6th 513.](#)

Validity, construction, and application of state requirements for placement of independent candidates for United States senate on ballot. [59 A.L.R.6th 111.](#)

Challenges to write-in ballots and certification of write-in candidates. [75 A.L.R.6th 311.](#)

**34-907. Limitation of ballot access for multi-term incumbents.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised Init. Measure 1994, No. 2, § 2, p. 1371, was repealed by S.L. 2002, ch. 1, § 1.

**34-907A. Information on Legislators' support for Congressional Term Limits Amendment. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised Init. Measure 1997, No. 4, § 2, was repealed by S.L. 2007, ch. 202, § 3.

**34-907B. Term Limits Pledge. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 34-907B, Init. Measure 1998, No. 1, sec. 2, p. 1189, was repealed by S.L. 2007, ch. 202, § 3.

**34-908. Each ballot to carry official election ballot identification on outside — Marking of ballot by voter.** — (1) Every ballot used at any primary, general or special election shall be marked on the outside with the official election ballot identification before it is given to the voter. At this time the election official distributing the ballots shall give the voter instructions in regard to folding the ballot after he has voted.

(2) The voter shall mark his ballot with a cross (X) or other mark sufficient to show his intent in the place provided after the name of the candidate for whom he intends to vote for each office.

(3) If a person votes by writing the name of a candidate on the ballot, such act shall constitute a vote for the person's name who appears without the necessity of placing a mark after the name written on the ballot, unless such a mark is required by a vote tally system.

#### **History.**

1970, ch. 140, § 128, p. 351; am. 1988, ch. 293, § 1, p. 932; am. 2013, ch. 285, § 3, p. 735.

### **STATUTORY NOTES**

#### **Prior Laws.**

The following former sections were repealed by S.L. 1970, ch. 140, § 210:

34-908. (1890-91, p. 57, § 59; reen. 1899, p. 33, § 50; reen. R.C. & C.L., § 407; C.S., § 575; I.C.A., § 33-807.)

34-909. (1890-91, p. 57, § 60; reen. 1899, p. 33, § 51; reen. R.C. & C.L., § 408; C.S., § 576; I.C.A., § 33-808.)

34-910. (R.C., § 409; am. 1917, ch. 93, § 3, p. 322; reen. C.L., § 409; C.S., § 577; I.C.A., § 33-809.)

34-911. (1890-1891, p. 57, § 62; reen. 1899, p. 33, § 53; reen. R.C., § 410; am. 1913, ch. 95, p. 384; reen. C.L., § 410; C.S., § 578; I.C.A., § 33-810.)



34-912. (1890-1891, p. 57, § 63; reen. 1899, p. 33, § 54; reen. R.C. & C.L., § 411; C.S., § 579; I.C.A., § 33-811.)

### **Amendments.**

The 2013 amendment, by ch. 285, substituted “ballot identification” for “stamp” in the section heading; added the subsection designations; and in subsection (1), substituted “marked” for “stamped” and “ballot identification” for “stamp” in the first sentence.

### **Effective Dates.**

Section 2 of S.L. 1988, ch. 293 declared an emergency. Approved March 31, 1988.

## **JUDICIAL DECISIONS**

**Cited in:** [Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 \(1975\).](#)

**34-909. General election sample ballots forwarded to counties by secretary of state.** — (1) The secretary of state, no later than September 7, shall provide the necessary general election sample ballot layout to each of the county clerks.

(2) The sample ballot layout shall contain the proper office titles, order of offices and ballot layout for the general election, with instructions for placement of candidates seeking election for federal, state, legislative, county and precinct offices and candidates seeking judicial office or retention. If a county is within more than one (1) legislative district, the secretary of state shall provide instructions on the requirements for a separate ballot for each legislative district that is within the county.

(3) The secretary of state shall certify to the county clerks the names and political party of the candidates qualified for placement on the general election ballot for all federal, state and legislative district offices on the sample ballots, along with any judicial candidates, by no later than the ninth Friday prior to the general election.

(4) The secretary of state shall certify the name of a candidate being appointed by the appropriate central committee as provided by [section 34-715, Idaho Code](#), by no later than the next business day after the appointment is received in the secretary of state's office, if received after the certification of candidates to the county clerks under subsection (3) of this section.

### **History.**

1970, ch. 140, § 199, p. 351; am. 1976, ch. 60, § 12, p. 200; am. 1984, ch. 131, § 5, p. 305; am. 1985, ch. 42, § 6, p. 87; am. 2019, ch. 96, § 9, p. 344.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-909 was repealed. See Prior Laws, § 34-908.

**Amendments.**

The 2019 amendment, by ch. 96, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.**

Section 13 of S.L. 1976, ch. 60 declared an emergency. Approved March 10, 1976.

Section 7 of S.L. 1984, ch. 131 declared an emergency. Approved March 31, 1984.

Section 7 of S.L. 1985, ch. 42 declared an emergency. Approved March 11, 1985.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

**34-910. Duty of county clerk to furnish sufficient ballots to each voting precinct — Record of number of ballots printed and furnished.**

— (1) It shall be the duty of the county clerk to furnish and cause to be delivered a sufficient number of election ballots to the judges of elections of each voting precinct. The ballots shall be delivered to the polling place within the precinct on or before the opening of the polls for the election together with the official election ballot identification in sealed packages. Upon receipt of the ballots and supplies, the chief judge of elections or other designated judge must return a written receipt to the county clerk.

(2) The county clerk shall keep a record of the number of ballots printed and furnished to each polling place within the county and preserve the same for one (1) year.

**History.**

1970, ch. 140, § 129, p. 351; am. 2011, ch. 285, § 9, p. 778; am. 2013, ch. 285, § 4, p. 735.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-910 was repealed. See Prior Laws, § 34-908.

**Amendments.**

The 2011 amendment, by ch. 285, in the last sentence of the first paragraph, substituted “receipt” for “delivery” and inserted “or other designated judge.”

The 2013 amendment, by ch. 285, added the subsection designations and substituted “election ballot identification” for “stamp and ink pad” in the second sentence in subsection (1).

**Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

**34-911. County clerk to prepare full instructions for the guidance of voters at elections.** — The county clerk shall prepare full instructions for the guidance of voters at such elections, as to obtaining ballots, as to the manner of marking them, and as to obtaining new tickets in place of those spoiled, and provide sample ballots. The form and manner of display of the above mentioned instructions shall be prescribed by the secretary of state and be uniform throughout the state.

**History.**

1970, ch. 140, § 130, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-911 was repealed. See Prior Laws, § 34-908.

**34-912. Procedure for correction of ballots when vacancy occurs after printing — Notice.** — When any vacancy occurs after the printing of the ballots and is filled as provided by law, the county clerk shall thereupon have printed a sufficient number of stickers containing the name of the candidate designated to fill the vacancy and shall deliver them to the judges of elections of the precincts interested therein.

The distributing clerk shall affix such stickers on the ballot before it is given to the elector. The sticker shall be placed over the name of the previous candidate. If the vacancy occurs after the deadline for filling the same, the distributing clerk shall cross the name of such candidate off the ballot and no votes shall be cast for the candidate. The county clerk shall notify the precincts of this authorization as soon as a vacancy occurs.

**History.**

1970, ch. 140, § 131, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-912 was repealed. See Prior Laws, § 34-908.

**34-913, 34-914. Delivery of supplies — Instruction cards and sample ballots. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised (1890-1891, p. 57, §§ 64, 65; reen. 1899, p. 33, §§ 55, 56; reen, R.C. & C.L., §§ 412, 413; C.S., §§ 580, 581; I.C.A., §§ 33-812, 33-813), were repealed by S.L. 1970, ch. 140, § 210.





## **CHAPTER 10**

### **ABSENTEE VOTING**

#### **Section.**

34-1001. Voting by absentee ballot authorized.

34-1002. Application for absentee ballot.

34-1002A. Emergency situation absentee ballot — Application.

34-1003. Issuance of absentee ballot.

34-1004. Marking and folding of absentee ballot — Affidavit.

34-1005. Return of absentee ballot.

34-1006. County clerks shall provide one or more “absent electors’ voting place.”

34-1007. Counting absentee ballots.

34-1008. Deposit of absentee ballots.

34-1009. Challenging absentee elector’s vote.

34-1010. Rejection of defective ballots.

34-1011. County clerk’s record of applications for absent elector’s ballots.

34-1012. Alternative procedures for absentee voting — Early voting.

34-1013. Early voting ballot security.

34-1014 — 34-1027. [Repealed.]

**34-1001. Voting by absentee ballot authorized.** — Any registered elector of the state of Idaho may vote at any election by absentee ballot as herein provided.

**History.**

1970, ch. 140, § 162, p. 351.

**STATUTORY NOTES**

**Cross References.**

Absentee voting by machine or paper ballot, § 34-2423.

Penalties for violation of election laws, § 18-2301 et seq.

**Prior Laws.**

Former §§ 34-1001 and 34-1002, which comprised 1890-1891, p. 57, §§ 67, 68; reen. 1899, p. 33, §§ 58, 59; reen. R.C. & C.L., §§ 414, 415; C.S., §§ 582, 583; I.C.A., §§ 33-901, 33-902; am. 1951, ch. 10, § 1, p. 19, were repealed by S.L. 1970, ch. 140, § 211.

**RESEARCH REFERENCES**

**A.L.R.** — Validity, construction, and application of early voting statutes.  
[29 A.L.R. 6th 343.](#)

**34-1002. Application for absentee ballot.** — (1) Any registered elector may make written application to the county clerk, or other proper officer charged by law with the duty of issuing official ballots for such election, for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, the elector's home address, county, and address to which such ballot shall be forwarded.

(2) In order to provide the appropriate primary election ballot to electors, in the event a political party elects to allow unaffiliated electors to vote in that party's primary election pursuant to [section 34-904A, Idaho Code](#), the elector shall designate, as part of the written application for a ballot for primary elections, the elector's party affiliation or designation as "unaffiliated." The application shall contain checkoff boxes for unaffiliated electors by which such electors shall indicate for which party's primary ballot the unaffiliated elector chooses to vote. Provided however, that no political party's primary election ballot shall be provided to an unaffiliated elector for a political party that has not elected to allow unaffiliated electors to vote in that political party's primary election pursuant to [section 34-904A, Idaho Code](#). If an unaffiliated elector does not indicate a choice of political party's primary election ballot, the elector shall receive a nonpartisan ballot.

(3) In order to provide the appropriate primary election ballot to electors, in the event one (1) or more political parties elect to allow electors affiliated with a different political party to vote in that party's primary election, the application shall contain checkoff boxes by which such electors may indicate the primary ballot in which the elector wishes to vote.

(4) For electors who are registered to vote as of January 1, 2012, and who remain registered electors, the elector shall designate, as part of the written application for a ballot for the 2012 primary elections, the elector's party affiliation or designation as "unaffiliated." The application shall contain checkoff boxes for unaffiliated electors by which such electors shall indicate for which party's primary election ballot the unaffiliated elector chooses to vote, pursuant to [section 34-904A, Idaho Code](#). Provided however, that no political party's primary election ballot shall be provided

to an unaffiliated elector for a political party that has not elected to allow unaffiliated electors to vote in the party's primary election pursuant to [section 34-904A, Idaho Code](#). If an unaffiliated elector does not indicate a choice of political party's primary election ballot, the elector shall receive a nonpartisan ballot. After the 2012 primary election, the county clerk shall record the party affiliation or unaffiliated designation so selected on the application for an absentee ballot as part of such an elector's record within the voter registration system as provided for in [section 34-437A, Idaho Code](#).

(5) After the 2012 primary election, electors who remain registered voters and who did not vote in the 2012 primary elections and who make written application for an absentee ballot shall be designated as unaffiliated electors as provided in [section 34-404, Idaho Code](#), and such electors shall be given the appropriate ballot for such "unaffiliated" designation pursuant to the provisions of this act.

(6) An elector may not change party affiliation or designation as "unaffiliated" on an application for absentee ballot. For primary elections, an elector may change party affiliation or designation as "unaffiliated" as provided for in [section 34-411A, Idaho Code](#).

(7) The application for an absent elector's ballot shall be signed personally by the applicant. The application for a mail-in absentee ballot shall be received by the county clerk not later than 5:00 p.m. on the eleventh day before the election. An application for in-person absentee voting at the absent elector's polling place described in [section 34-1006, Idaho Code](#), shall be received by the county clerk not later than 5:00 p.m. on the Friday before the election. Application for an absentee ballot may be made by using a facsimile machine or other electronic transmission.

(8) A person may make application for an absent elector's ballot by use of a properly executed federal postcard application as provided for in the laws of the United States known as uniformed and overseas citizens absentee voting act (UOCAVA, [52 U.S.C. 20301 et seq.](#), as amended). The issuing officer shall keep as a part of the records of such officer's office a list of all applications so received and of the manner and time of delivery or mailing to and receipt of returned ballot.

(9) The county clerk shall, not later than seventy-five (75) days after the date of each general election, submit a report to the secretary of state containing information concerning absentee voters as required by federal law.

### **History.**

1970, ch. 140, § 163, p. 351; am. 1972, ch. 157, § 1, p. 349; am. 1973, ch. 304, § 7, p. 646; am. 1976, ch. 353, § 2, p. 1166; am. 1987, ch. 167, § 1, p. 327; am. 1994, ch. 122, § 2, p. 271; am. 1995, ch. 215, § 12, p. 747; am. 2002, ch. 236, § 1, p. 707; am. 2003, ch. 48, § 11, p. 181; am. 2010, ch. 332, § 1, p. 881; am. 2011, ch. 319, § 9, p. 929; am. 2013, ch. 135, § 4, p. 307; am. 2016, ch. 137, § 1, p. 402; am. 2019, ch. 96, § 10, p. 344; am. 2020, ch. 286, § 1, p. 829.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-1002 was repealed. See Prior Laws, § 34-1001.

### **Amendments.**

The 2010 amendment, by ch. 332, in the second paragraph, in the third sentence, substituted “on the Friday before the election” for “on the day before the election,” in the fourth sentence, added “or other electronic transmission,” and in the last sentence, substituted “ninety-six (96) hours” for “forty-eight (48) hours”; and deleted the second sentence in the third paragraph, which formerly read: “A properly executed federal postcard application (F.P.C.A.), shall be considered as a request for an absent elector’s ballot through the next two (2) regularly scheduled general elections for federal office following receipt of the application.”

The 2011 amendment, by ch. 319, added “— Primary elections” to the section heading, added subsections (2) through (6), added the subsection designations, and made gender neutral changes.

The 2013 amendment, by ch. 135, deleted “Primary elections” at the end of the section heading; substituted “by notifying the county clerk within ninety-six (96) hours prior to the closing of the polls” for “on the day of election by notifying the county clerk” at the end of the fifth sentence in subsection (7); and inserted “as amended” at the end of the fifth sentence in subsection (8).

The 2016 amendment, by ch. 137, in subsection (7), substituted “eleventh day before the election” for “sixth day before the election” in the second sentence.

The 2019 amendment, by ch. 96, substituted “(UOCAVA, 52 U.S.C. 20301 et seq., as amended)” for “(UOCAVA, 42 U.S.C. 1973 ff, et seq., as amended)” at the end of the first sentence in subsection (8).

The 2020 amendment, by ch. 286, deleted the former last two sentences in subsection (7), which read: “In the event a registered elector is unable to vote in person at the elector’s designated polling place on the day of election because of an emergency situation that rendered the elector physically unable, the elector may nevertheless apply for an absent elector’s ballot by notifying the county clerk within ninety-six (96) hours prior to the closing of the polls. No person may, however, be entitled to vote under an emergency situation unless the situation claimed rendered the elector physically unable to vote at the elector’s designated polling place within ninety-six (96) hours prior to the closing of the polls.” See § 34-1002A for present comparable provisions.

### **Legislative Intent.**

Section 1 of S.L. 2011, ch. 319 provided: “Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each political party may select that party’s candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing. Consequently, it is the

intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections.”

### **Compiler’s Notes.**

The term “this act” at the end of subsection (5) refers to S.L. 2011, Chapter 319, which is presently codified as §§ 34-308, 34-404, 34-406, 34-411, 34-411A, 34-901, 34-904A, 34-1002, and 34-1003. The reference probably should be to “this chapter,” being chapter 10, title 34, Idaho Code.

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 4 of S.L. 2002, ch. 236 declared an emergency. Approved March 22, 2002.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

Section 3 of S.L. 2020, ch. 286 declared an emergency. Approved March 24, 2020.

## **JUDICIAL DECISIONS**

### **Federal Law.**

Prior to January 1, 2011, former § 50-443 made the provisions of the Federal Voting Assistance Act of 1955 effective for absentee balloting in municipal elections, even though that act had been repealed in 1986. *Brannon v. City of Coeur d’Alene*, 153 Idaho 843, 292 P.3d 234 (2012).

**34-1002A. Emergency situation absentee ballot — Application. — (1)**

A registered elector who has not previously requested an absentee ballot for the same election and who is physically unable to vote in person at the elector's designated polling place on the day of the election because of an emergency situation requiring hospitalization of the elector may request an emergency situation absentee ballot by filing an emergency situation absentee ballot application with the county clerk. The secretary of state shall prescribe the form for the emergency situation absentee ballot application.

(a) The emergency application may be submitted to the county clerk up to five (5) days prior to the election but shall be received by the county clerk no later than 5:00 p.m. on the Monday before the election, in order to allow for the coordination of ballot delivery to the requesting elector at the hospital.

(b) The emergency application shall be signed personally by the applicant.

(c) The situation rendering the requesting elector physically unable to vote in person at the polling place must have occurred after 5:00 p.m. on the eleventh day prior to the election, and the applicant must attest to that fact with the applicant's signature.

(2) Regardless of the time of the request, an absentee ballot delivered under this section must be returned to the county clerk's office from which it was received in order to be counted, in accordance with [section 34-1005, Idaho Code](#).

(3) The county clerk shall deem the location of an individual to be an absent elector's polling place, as provided in [section 34-1006, Idaho Code](#), solely for the purposes of registering the applicant under [section 34-408A, Idaho Code](#), and shall provide the applicant with an emergency situation absentee ballot in the event that the individual who wishes to apply for an emergency situation absentee ballot under this section:

(a) Was not a registered elector at the time the register closed but became eligible for registration following the closing of the register;



(b) Was rendered physically unable to register in person on election day by the emergency situation; and

(c) Was otherwise qualified to request an emergency situation absentee ballot under this section.

**History.**

I.C., § 34-1002A, as added by 2020, ch. 286, § 2, p. 829.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1002A, Classifications for absent elector's ballot, which comprised I.C., § 34-1002A, as added by 1973, ch. 304, § 8, p. 646; am. 1976, ch. 353, § 3, p. 1166, was repealed by S.L. 1994, ch. 122, § 3, effective July 1, 1994.

**Compiler's Notes.**

This section is derived from former provisions in § 33-1002.

**Effective Dates.**

Section 3 of S.L. 2020, ch. 286 declared an emergency. Approved March 24, 2020.

**34-1003. Issuance of absentee ballot.** — (1) Upon receipt of an application for an absent elector's ballot within the proper time, the county clerk receiving it shall examine the records of the county clerk's office to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested and, if found to be so, the elector shall arrange for the applicant to vote by absent elector's ballot.

(2) In the case of requests for primary ballots:

(a) Except as provided in paragraph (b) of this subsection, an elector who has designated a political party affiliation shall receive a primary ballot for that political party.

(b) An elector who has designated a political party affiliation pursuant to [section 34-404, Idaho Code](#), may receive the primary election ballot of a political party other than the political party such elector is affiliated with if such other political party has provided notification to the secretary of state that identifies the political party such elector is affiliated with, as provided for in [section 34-904A\(2\)\(b\), Idaho Code](#).

(c) An "unaffiliated" elector shall receive the primary ballot for the political party which the elector designated in the elector's application for an absentee ballot pursuant to [section 34-1002, Idaho Code](#). Provided however, that a political party's ballot shall not be provided to an "unaffiliated" elector where that political party has not elected to allow "unaffiliated" electors to vote in such party's primary election pursuant to [section 34-904A, Idaho Code](#).

(d) If an "unaffiliated" elector does not indicate a choice of political party's primary ballot, the elector shall receive a nonpartisan ballot.

(3) The absentee ballot may be delivered to the absent elector in the office of the county clerk, by postage prepaid mail or by other appropriate means, including use of a facsimile machine or other electronic transmission. Validly requested absentee ballots for candidates for federal office, where the request is received at least forty-five (45) days before an election, shall be sent no later than forty-five (45) days before that election to all electors who are entitled to vote by absentee ballot.

(4) Pursuant to the uniformed and overseas citizens absentee voting act (UOCAVA, [52 U.S.C. 20301 et seq.](#), as amended) the secretary of state shall establish procedures for the transmission of blank absentee ballots by mail and by electronic transmission for all electors who are entitled to vote by absentee ballot under the uniformed and overseas citizens absentee voting act, and by which such electors may designate whether the elector prefers the transmission of such ballots by mail or electronically. If no preference is stated, the ballots shall be transmitted by mail. The secretary of state shall establish procedures for transmitting such ballots in a manner that shall protect the security and integrity of such ballots and the privacy of the elector throughout the process of transmission.

(5) A political party may supply a witness to accompany the clerk in the personal delivery of an absentee ballot. If the political party desires to supply a witness, it shall be the duty of the political party to supply the names of such witnesses to the clerk no later than forty-six (46) days prior to the election. The clerk shall notify such witnesses of the date and approximate hour the clerk or deputy clerk intends to deliver the ballot.

(6) A candidate for public office or a spouse of a candidate for public office shall not be a witness in the personal delivery of absentee ballots.

(7) An elector physically unable to mark such elector's own ballot may receive assistance in marking such ballot from the officer delivering same or an available person of the elector's own choosing. In the event the election officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. When such ballot is marked by an election officer, the witnesses on hand shall be allowed to observe such marking. No county clerk, deputy, or other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner.

(8) Notwithstanding any other provision of this section, for any election that takes place prior to December 31, 2020, the following provisions shall apply:

(a) Validly requested absentee ballots by uniformed and overseas voters, pursuant to the uniformed and overseas citizens absentee voting act, where the request is received at least forty-five (45) days before an

election, shall be sent no later than forty-five (45) days before that election; and

(b) For any other validly requested absentee ballots that are received at least thirty (30) days before an election by electors who are entitled to vote by absentee ballot and are not within the provisions of paragraph (a) of this subsection, such ballots shall be sent no later than thirty (30) days before the election.

### **History.**

1970, ch. 140, § 164, p. 351; am. 1973, ch. 304, § 9, p. 646; am. 1975, ch. 66, § 1, p. 132; am. 1984, ch. 131, § 6, p. 305; am. 1993, ch. 100, § 1, p. 253; am. 1994, ch. 122, § 4, p. 271; am. 1996, ch. 74, § 1, p. 238; am. 2010, ch. 332, § 2, p. 881; am. 2011, ch. 11, § 14, p. 24; am. 2011, ch. 319, § 10, p. 929; am. 2019, ch. 96, § 11, p. 344; am. 2020 (1st E.S.), ch. 1, § 1.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

The following former sections were repealed by S.L. 1970, ch. 140, § 11:

34-1003. (1890-1891, p. 57, § 69; reen. 1899, p. 33, § 60; reen. R.C. & C.L., § 416; C.S., § 584; I.C.A., § 33-903.)

34-1004. (1890-1891, p. 57, § 70; reen. 1899, p. 33, § 61; reen. R.C. & C.L., § 417; C.S., § 585; I.C.A., § 33-904.)

34-1005. (1890-1891, p. 57, § 73; reen. 1899, p. 33, § 64; compiled and reen. R.C. & C.L., § 418; C.S., § 586; I.C.A., § 33-905.)

34-1006. (1890-1891, p. 57, § 74; reen. R.C. & C.L., § 419; C.S., § 587; I.C.A., § 33-906.)

34-1007. (1890-1891, p. 57, § 75; reen. 1899, p. 33, § 66; am. R.C. & C.L., § 420; C.S., § 588; I.C.A., § 33-907.)

34-1008. (1890-1891, p. 57, § 85; reen. 1899, p. 33, § 76; reen. R.C. & C.L., § 421; C.S., § 589; I.C.A., § 33-908; am. 1957, ch. 220, § 1, p. 499.)

34-1009. (1890-1891, p. 57, § 81; reen. 1899, p. 33, § 72; reen. R.C. & C.L., § 422; C.S., § 590; I.C.A., §§ 33-909.)

34-1010. (1890-1891, p. 57, § 77; reen. 1899, p. 33, § 68; reen. R.C. & C.L., § 423; C.S., § 591; I.C.A., § 33-910.)

34-1011. (1890-1891, p. 57, § 78; am. 1895, p. 91, § 4; reen. 1899, p. 33, § 69; compiled and reen. R.C., § 424; am. 1917, ch. 93, § 4, p. 323; reen. C.L., § 424; C.S., § 592; I.C.A., § 33-911; am. 1951, ch. 208, § 1, p. 435; am. 1966 (3rd E.S.), ch. 5, § 31, p. 16.)

34-1026. (1890-1891, p. 57, § 96; reen. 1899, p. 33, § 87; reen. R.C. & C.L., § 437; C.S., § 607; I.C.A., § 33-926.)

34-1027. (1890-1891, p. 57, § 80; reen. 1899, p. 33, § 71; reen. R.C. & C.L., § 438; C.S., § 608; I.C.A., § 33-927.)

### **Amendments.**

The 2010 amendment, by ch. 332, in the first paragraph, added “or other electronic transmission” in the second sentence and added the last sentence; and added the second paragraph.

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 11, inserted “for candidates for federal office” in the last sentence in the first paragraph.

The 2011 amendment, by ch. 319, added subsection (2), added the subsection designations, and made gender neutral changes.

The 2019 amendment, by ch. 96, substituted “[52 U.S.C. 20301 et seq.](#)” for “[42 U.S.C. 1973 ff](#), et seq.,” near the beginning of subsection (4); and substituted “forty-six (46) days” for “forty-five (45) days” near the end of the second sentence in subsection (5).

The 2020 (1st E.S.) amendment, by ch. 1, added subsection (8).

### **Legislative Intent.**

Section 1 of S.L. 2011, ch. 319 provided: “Legislative Findings and Intent. The Legislature finds that it is the public policy of this state to encourage voter participation in primary and general elections. While each

political party may select that party's candidates in primary elections, it is the intent of the Legislature that every effort be made to accommodate the participation of voters who are unaffiliated with a particular political party, but who are willing to affiliate with a party for purposes of voting in primary elections. The Legislature also finds, as noted by the United States Supreme Court, that the state may not deprive a political party of its rights under the **First** and **Fourteenth Amendments** to enter into political association with individuals of its own choosing. Consequently, it is the intent of the Legislature to provide political parties in this state with a mechanism to voluntarily and more fully exercise those rights of political association by providing certain provisions relating to primary elections."

### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

Section 11 of S.L. 2011, ch. 319 provided: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

### **Effective Dates.**

Section 2 of S.L. 1975, ch. 66 declared an emergency. Approved March 18, 1975.

Section 7 of S.L. 1984, ch. 131 declared an emergency. Approved March 31, 1984.

Section 4 of S.L. 1996, ch. 74 declared an emergency. Approved March 6, 1996.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

Section 3 of S.L. 2020 (1st E.S.), ch. 1 declared an emergency. Approved August 27, 2020.

**34-1004. Marking and folding of absentee ballot — Affidavit. —**

Upon receipt of the absent elector's ballot the elector shall thereupon mark and fold the ballot so as to conceal the marking, deposit it in the ballot envelope and seal the envelope securely. In the event an election requires a perforated ballot, the unvoted portion must be deposited in the unvoted ballot envelope and sealed. The ballot envelopes must then be deposited in the return envelope and sealed securely.

The elector shall then execute an affidavit on the back of the return envelope in the form prescribed, provided however, that such affidavit need not be notarized.

**History.**

1970, ch. 140, § 165, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1004 was repealed. See Prior Laws, § 34-1003.

**34-1005. Return of absentee ballot.** — The return envelope shall be mailed or delivered to the officer who issued the same; provided, that an absentee ballot must be received by the issuing officer by 8:00 p.m. on the day of election before such ballot may be counted.

Upon receipt of an absent elector's ballot the county clerk of the county wherein such elector resides shall verify the authenticity of the affidavit and shall write or stamp upon the envelope containing the same, the date and hour such envelope was received in his office and record the information pursuant to [section 34-1011, Idaho Code](#). He shall safely keep and preserve all absent electors' ballots unopened until the time prescribed for delivery to the polls or to the central count ballot processing center.

**History.**

1970, ch. 140, § 166, p. 351; am. 1972, ch. 157, § 2, p. 349; am. 1995, ch. 215, § 13, p. 747; am. 2007, ch. 202, § 4, p. 620; am. 2011, ch. 285, § 10, p. 778.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1005 was repealed. See Prior Laws, § 34-1003.

**Amendments.**

The 2007 amendment, by ch. 202, in the first sentence in the last paragraph, deleted “and, if the ballot was delivered in person, the name and address of the person delivering the same” from the end.

The 2011 amendment, by ch. 285, in the second paragraph, added “and record the information pursuant to [section 34-1011, Idaho Code](#)” at the end of the first sentence and substituted “polls or to the central count ballot processing center” for “judges in accordance with this act” at the end of the last sentence.

**Effective Dates.**



Section 3 of S.L. 1972, ch. 157 declared an emergency. Approved March 17, 1972.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law Analysis**

[Delivery of ballots to judges.](#)

[Writ of mandate.](#)

#### **[Delivery of Ballots to Judges.](#)**

Absentee ballots must be delivered to, and be opened by, the election judges prior to the close of the polls on the day of the election. [Burge v. Tibor, 88 Idaho 149, 397 P.2d 235 \(1964\).](#)

#### **[Writ of Mandate.](#)**

Writ of mandate to compel count of absentee ballots must be denied, where the ballots were not received by county auditor until the day after the election, as they could not have been delivered to election judges before the close of the polls, as required. [Burge v. Tibor, 88 Idaho 149, 397 P.2d 235 \(1964\).](#)

## **RESEARCH REFERENCES**

**A.L.R.** — Challenges to write-in ballots and certification of write-in candidates. [75 A.L.R.6th 311.](#)

**34-1006. County clerks shall provide one or more “absent electors’ voting place.”** — (1) Each county clerk shall provide one (1) or more “absent electors’ polling place(s)” as determined necessary by each county. Each polling place shall be provided with voting booths and other necessary supplies as provided by law. Except as provided in section 34-308, Idaho Code, every elector shall always be provided the opportunity to vote in person in an election, notwithstanding any declaration of emergency, extreme emergency, or disaster emergency by the governor

(2) Electioneering is prohibited at an “absent electors’ polling place” as provided in [section 18-2318, Idaho Code](#).

**History.**

1970, ch. 140, § 167, p. 351; am. 1994, ch. 21, § 1, p. 36; am. 1998, ch. 163, § 1, p. 551; am. 2020 (1st E.S.), ch. 3, § 1.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1006 was repealed. See Prior Laws, § 34-1003.

**Amendments.**

The 2020 (1st E.S.) amendment, by ch. 3, added the subsection designators to the existing text, and added the last sentence in subsection (1).

**Effective Dates.**

Section 2 of S.L. 2020 (1st E.S.), ch. 3 declared an emergency. Approved September 1, 2020.

**34-1007. Counting absentee ballots.** — (1) In those counties that count ballots at the polls, upon receipt of absent elector's ballot or ballots, the officer receiving them shall forthwith enclose the same, unopened in a carrier envelope endorsed with the name and official title of such officer and the words: "absent electors' ballot to be opened only at the polls." He shall hold the same until the delivery of the official ballots to the judges of election of the precinct in which the elector resides and shall deliver the ballot or ballots to the judges with such official ballots.

(2) In those counties that count ballots at a central location, absentee ballots that are received may, in the discretion of the county clerk, be retained in a secure place in the clerk's office and such ballots shall be added to the precinct returns at the time of ballot tabulation. Provided, however, for any election that takes place prior to December 31, 2020, absentee ballots may be opened and scanned beginning seven (7) days prior to election day. If the absentee ballots are opened prior to election day, the ballots shall be securely maintained in a nonproprietary electronic access-controlled room under twenty-four (24) hour nonproprietary video surveillance that is livestreamed to the public and which video must be archived for at least ninety (90) days following the election. The ballots shall be boxed and secured in the same access-controlled room each day after being opened or scanned. A minimum of two (2) election officials must be present whenever absentee ballots are accessed. No results shall be tabulated for absentee ballots until the polls close on the day of the election held prior to December 31, 2020.

(3) The clerk shall deliver to the polls a list of those absentee ballots received to record in the official poll book that the elector has voted.

### **History.**

1970, ch. 140, § 168, p. 351; am. 2002, ch. 236, § 2, p. 707; am. 2007, ch. 202, § 5, p. 620; am. 2020 (1st E.S.), ch. 1, § 2.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-1007 was repealed. See Prior Laws, § 34-1003.

### **Amendments.**

The 2007 amendment, by ch. 202, in the last paragraph, deleted “on election day” following “received” in the first sentence, and added the last sentence.

The 2020 (1st E.S.) amendment, by ch. 1, rewrote the subsection heading, which formerly read: “Transmission of absentee ballots to polls”; added the subsection designators; substituted “In those counties that count ballots at the polls, upon receipt of absent elector’s ballots” for “On receipt of such absent elector’s ballots” at the beginning of subsection (1); and rewrote the subsection (2), which formerly read: “In those counties which count ballots at a central location, absentee ballots that are received may, in the discretion of the county clerk, be retained in a secure place in the clerk’s office and such ballots shall be added to the precinct returns at the time of ballot tabulation. The clerk shall deliver to the polls a list of those absentee ballots received to record in the official poll book that the elector has voted.”

### **Effective Dates.**

Section 4 of S.L. 2002, ch. 236 declared an emergency. Approved March 22, 2002.

Section 3 of S.L. 2020 (1st E.S.), ch. 1 declared an emergency. Approved August 27, 2020.

**34-1008. Deposit of absentee ballots.** — Between the opening and closing of the polls on such election day the judges of election of such precinct shall open the carrier envelope only, announce the absent elector's name, and in the event they find such applicant to be a duly registered elector of the precinct and that he has not heretofore voted at the election, they shall open the return envelope and remove the ballot envelopes and deposit the same in the proper ballot boxes and cause the absent elector's name to be entered on the poll books the same as though he had been present and voted in person. The ballot envelope shall not be opened until the ballots are counted.

**History.**

1970, ch. 140, § 169, p. 351; am. 1995, ch. 215, § 14, p. 747.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1008 was repealed. See Prior Laws, § 34-1003.

**Effective Dates.**

Section 16 of S.L. 1995, ch. 215 declared an emergency. Approved March 17, 1995.

**34-1009. Challenging absentee elector's vote.** — The vote of any absent elector may be challenged in the same manner as other votes are challenged and the receiving judges shall have power and authority to determine the legality of such ballot. If the challenge be sustained, or if the receiving judges determine, that the affidavit accompanying the absent elector's ballot is insufficient, or that the elector is not a qualified registered elector the envelope containing the ballot of such elector shall not be opened and the judges shall endorse on the back of the envelope the reason therefor. If an absent elector's envelope contains more than one (1) marked ballot of any one (1) kind, none of such ballots shall be counted and the judges shall make notations on the back of the ballots the reason therefor. Judges of election shall certify in their returns the number of absent electors' ballots cast and counted and the number of such ballots rejected.

**History.**

1970, ch. 140, § 170, p. 351; am. 2004, ch. 248, § 1, p. 714.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1009 was repealed. See Prior Laws, § 34-1003.

**Effective Dates.**

Section 2 of S.L. 2004, ch. 248 declared an emergency. Approved March 23, 2004.

**34-1010. Rejection of defective ballots.** — All absent electors' identification envelopes, ballot stubs and absent electors' ballots rejected by the judges in accordance with the provisions of this act shall be returned to the county clerk. All absent electors' ballots received by the county clerk after 8:00 p.m. on the day of the general, primary or special election, together with the rejected absent electors' ballots returned by the judges of election as provided in this section, shall remain in the sealed identification envelopes and be handled in the manner provided for other spoiled ballots.

**History.**

1970, ch. 140, § 171, p. 351; am. 1973, ch. 304, § 10, p. 646.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1010 was repealed. See Prior Laws, § 34-1003.

**Compiler's Notes.**

The term "this act" at the end of the first sentence refers to S.L. 1970, Chapter 140, which is codified throughout title 34, Idaho Code. The reference probably should be to "this chapter," being chapter 10, title 34, Idaho Code.

**34-1011. County clerk's record of applications for absent elector's ballots.** — The county clerk shall keep a record in his office containing a list of names and precinct numbers of electors making application for absent elector's ballots, together with the date on which such application was made, the date on which such absent elector's ballot was returned. If an absent elector's ballot is not returned or if it be rejected and not counted, such fact shall be noted on the record. Such record shall be open to public inspection under proper regulations.

**History.**

1970, ch. 140, § 172, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1011 was repealed. See Prior Laws, § 34-1003.



**34-1012. Alternative procedures for absentee voting — Early voting.**

— (1) Those counties that utilize absentee voting facilities that have access to the Idaho statewide voter registration system and count ballots at a central location or utilize a polling location based tabulation system may elect to conduct “early voting” according to the provisions of this section. For those counties that elect to do “early voting,” early voting shall begin on or before the third Monday before the election and end at 5:00 p.m. on the Friday before the election. Primary election ballots shall be issued pursuant to section 34-1002(2), Idaho Code.

(2) A voter who appears at an “early voting” station to vote shall state his or her name and address to the election official and present the voter’s identification as required by sections 34-1113 and 34-1114, Idaho Code.

(3) The election official shall examine the records to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested. The provisions of [section 34-408A, Idaho Code](#), authorizing election day registration shall also apply in determining the applicant’s qualifications to vote.

(4) Before receiving a ballot, each elector shall sign his or her name in the election register and poll book provided for early voting.

(5) The elector shall then be given the appropriate ballots containing the official election ballot identification pursuant to [section 34-901, Idaho Code](#), and shall be given folding instructions for such ballots, if appropriate.

(6) Upon receipt of the ballots, the elector shall retire to a vacant voting booth and mark the ballots according to the instructions provided.

(7) After marking the ballot, the elector shall present himself or herself to the election official at the ballot box and state his or her name and address. The elector shall then deposit the ballot in the ballot box or hand it to the election official, who shall deposit it. The election official shall then record that the elector has voted and proclaim the same in an audible voice.

(8) Voters requiring assistance shall be provided with such assistance in accordance with [section 34-1108, Idaho Code](#).

(9) Electioneering is prohibited at an early voting polling place as provided in [section 18-2318, Idaho Code](#).

**History.**

[I.C., § 34-1012](#), as added by 2013, ch. 132, § 1, p. 302; am. 2016, ch. 138, § 1, p. 403.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1012, which comprised 1890-1891, p. 57, § 79; reen. 1899, p. 33, § 70; reen. R.C. & C.L., § 425; C.S., § 593; I.C.A., § 33-912, was repealed by S.L. 1970, ch. 140, § 11.

**Amendments.**

The 2016 amendment, by ch. 138, designated the former introductory paragraph as subsection (1) and redesignated the subsequent subsections accordingly; inserted “or utilize a polling location based tabulation system” in the first sentence in subsection (1); and rewrote present subsection (5), which formerly read: “The elector shall then be given the appropriate ballots that have been stamped with the official election stamp and shall be given folding instructions for such ballots, if appropriate”.

**Effective Dates.**

Section 2 of S.L. 2016, ch. 138 declared an emergency. Approved March 23, 2016.

**34-1013. Early voting ballot security.** — (1) A detailed plan for the security of ballots for early voting shall be submitted to the secretary of state for approval no later than the third Friday of January or at least thirty (30) days prior to implementing an early voting plan. Once an early voting plan has been approved by the secretary of state, the plan shall be approved for the entire election year, unless it is modified. Any modified plan shall be submitted to the secretary of state for approval. Once a plan is approved, the county clerk shall notify the secretary of state of the county's intent to use the early voting process prior to each election and before early voting begins.

(2) At a minimum, the following procedures must be followed: (a) The ballot boxes used for casting early ballots shall remain locked and secured with a numbered seal until the time of tabulation on election day; (b) A record shall be maintained consisting of the number of ballots issued by date and seal number of each ballot box used for early voting; (c) Arrangements shall be made to have a deputy sheriff, police officer or bonded private security firm secure the location; and (d) The actual counting of ballots shall not begin until election day, and the results shall not be released to the public until all voting places in the state have closed.

### **History.**

**I.C., § 34-1013**, as added by 2013, ch. 132, § 2, p. 302; am. 2018, ch. 155, § 1, p. 312.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-1013, which comprised 1890-1891, p. 57, § 82; reen. 1899, p. 33, § 73; reen. R.C. & C.L., § 426; C.S., § 594; I.C.A., § 33-913, was repealed by S.L. 1970, ch. 140, § 11.

### **Amendments.**

The 2018 amendment, by ch. 155, designated the first sentence of the section as present subsection (1); rewrote present subsection (1), which formerly read: “A detailed plan for the security of ballots for early voting shall be submitted to the secretary of state for approval no later than thirty (30) days before early voting begins”; designated the former second sentence in the section as present subsection (2); redesignated former subsections (1) through (4) as paragraphs (2)(a) through (2)(d).

**34-1014 — 34-1027. Ballots — Officers not to divulge information —  
Challenging voters — Oath — Disposal of stubs — Poll lists.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by S.L. 1970, ch. 140, § 11:

34-1014. (1890-1891, p. 57, § 83; reen. 1899, p. 33, § 74; reen. R.C. & C.L., § 426a; C.S., § 595; I.C.A., § 33-914.) 34-1015. (1890-1891, p. 57, § 84; reen. 1899, p. 33, § 75; am. R.C. & C.L., § 427; C.S., § 596; I.C.A., § 33-915.) 34-1016. (1890-1891, p. 57, § 86; reen. 1899, p. 33, § 77; reen. R.C., § 528; am. 1913, ch. 92, § 19, p. 379; am. C.L., § 428; C.S., § 597; I.C.A., § 33-916.) 34-1017. (1913, ch. 92, § 12, p. 376; reen. C.L., § 428a; C.S., § 598; I.C.A., § 33-917.) 34-1018. (1890-1891, p. 57, § 87; reen. 1899, p. 33, § 78; reen. R.C. & C.L., § 429; C.S., § 599; I.C.A., § 33-918.) 34-1019. (1890-1891, p. 57, § 88; reen. 1899, p. 33, § 79; reen. R.C. & C.L., § 430; C.S., § 600; I.C.A., § 33-919.) 34-1020. (1890-1891, p. 57, § 90; reen. 1899, p. 33, § 81; reen. R.C. & C.L., § 431; C.S., § 601; I.C.A., § 33-920.) 34-1021. (1890-1891, p. 57, § 89; am. 1895, p. 91, § 6; reen. 1899, p. 33, § 80; am. R.C. & C.L., § 432; C.S., § 602; I.C.A., § 33-921; am. 1966 (3rd E.S.), ch. 5, § 32, p. 16; am. 1967, ch. 360, § 11, p. 1011.) 34-1022. (1890-1891, p. 57, § 91; am. 1895, p. 91, § 5; reen. 1899, p. 33, § 82; reen. R.C. & C.L., § 433; C.S., § 603; I.C.A., § 33-922; am. 1966 (3rd E.S.), ch. 5, § 33, p. 16.) 34-1023. (1890-1891, p. 57, § 93; reen. 1899, p. 33, § 84; reen. R.C. & C.L., § 434; C.S., § 604; I.C.A., § 33-923.) 34-1024. (1890-1891, p. 57, § 94; reen. 1899, p. 33, § 85; reen. R.C. & C.L., § 435; C.S., § 605; I.C.A., § 33-924.) 34-1025. (1890-1891, p. 57, §§ 92, 95; reen. 1899, p. 33, §§ 83, 86; compiled and reen. R.C. & C.L., § 436; C.S., § 606; I.C.A., § 33-925.) 34-1026. (1890-1891, p. 57, § 96; reen. 1899, p. 33, § 87; reen. R.C. & C.L., § 437; C.S., § 607; I.C.A., § 33-926.) 34-1027. (1890-1891, p. 57, § 80; reen. 1899, p. 33, § 71; reen. R.C. & C.L., § 438; C.S., § 608; I.C.A., § 33-927.)



## **CHAPTER 11**

### **CONDUCT OF ELECTIONS**

#### **Section.**

34-1101. Opening and closing of polls.

34-1102. Changing polling place — Proclamation and notice.

34-1103. Opening ballot boxes.

34-1104. Judges may administer oaths — Challenge of voters.

34-1105. Duties of constable.

34-1106. Signing combination election record and poll book — Delivery of ballot to elector.

34-1106A. Electronic poll book authorized.

34-1107. Manner of voting.

34-1108. Assistance to voter.

34-1109. Spoiled ballots.

34-1110. Officers not to divulge information.

34-1111. Challenging voters.

34-1112. Handbook of elector's qualifications.

34-1113. Identification at the polls.

34-1114. Affidavit in lieu of personal identification.

34-1115 — 34-1129. [Repealed.]

**34-1101. Opening and closing of polls.** — (1) At all elections conducted pursuant to title 34, Idaho Code, the polls shall be opened at 8:00 A.M. and remain open until all registered electors of that precinct have appeared and voted or until 8:00 P.M. of the same day, whichever comes first. The county clerk, at his option, however, may open the polls in his county at 7:00 A.M. for a primary or general election.

(2) Upon opening the polls, one (1) of the judges shall make the proclamation of the same and thirty (30) minutes before closing the polls a proclamation shall be made in the same manner. Any elector who is in line at 8:00 P.M. shall be allowed to vote notwithstanding the pronouncement that the polls are closed.

**History.**

1970, ch. 140, § 173, p. 351; am. 1972, ch. 349, § 1, p. 1033; am. 1973, ch. 304, § 11, p. 646; am. 1993, ch. 313, § 12, p. 1157.

**STATUTORY NOTES**

**Cross References.**

Penalties for violation of election laws, § 18-2301 et seq.

Preparation of polling place, § 34-2415.

Voting by absentee ballot, § 34-1001 et seq.

Voting by machine or vote tally system, § 34-2401 et seq.

**Prior Laws.**

Former §§ 34-1101 to 34-1129, which comprised 1917, ch. 142, §§ 1 to 14, p. 453; reen. C.L., §§ 32:1 to 32:14; C.S., §§ 609 to 622; am. 1923, ch. 57, § 1; am. 1937, ch. 45, §§ 1 to 6, p. 59; am. 1941, ch. 146, §§ 1, 2, p. 296; am. 1943, ch. 107, §§ 1, 2, p. 208; 1951, ch. 7, §§ 1 to 15, p. 15; am. 1953, ch. 56, § 1, p. 76; am. 1957, ch. 217, §§ 1 to 12, p. 468; am. 1959, ch. 77, § 1, p. 176; am. 1959, ch. 78, § 1, p. 176; am. 1965, ch. 189, § 1, p. 397; am. 1966 (3rd E.S.), ch. 5, § 34, p. 16, were repealed by S.L. 1970, ch. 140, § 212.



**Effective Dates.**

Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

**34-1102. Changing polling place — Proclamation and notice. —**

Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after assembling and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election and the county clerk shall be notified of the change.

Upon adjourning any election, the judges shall cause proclamation thereof to be made, and shall post a notice upon the place where the adjournment was made from notifying electors of the change of polling place.

**History.**

1970, ch. 140, § 174, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1102 was repealed. See Prior Laws, § 34-1101.

**34-1103. Opening ballot boxes.** — (1) In the presence of bystanders the judges of elections shall break the sealed packages of election ballots and other supplies.

(2) Before receiving any ballots the judges shall open and exhibit, close and lock the ballot boxes, and thereafter they shall not be removed from the polling place until all ballots are counted. They shall not be opened until the polls are closed unless the precinct is using a duplicate set of ballot boxes.

**History.**

1970, ch. 140, § 175, p. 351; am. 2013, ch. 285, § 5, p. 735.

**STATUTORY NOTES**

**Cross References.**

Duplicate ballot boxes used for counting during balloting, § 34-1201.

**Prior Laws.**

Former § 34-1103 was repealed. See Prior Laws, § 34-1101.

**Amendments.**

The 2013 amendment, by ch. 285, added the subsection designations and deleted “official stamp” following “election ballots” in subsection (1).

**34-1104. Judges may administer oaths — Challenge of voters.** — Any judge may administer and certify any oath required to be administered during the progress of an election or challenge any elector.

**History.**

1970, ch. 140, § 176, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1104 was repealed. See Prior Laws, § 34-1101.

**34-1105. Duties of constable.** — The judges of election may appoint some capable person to act as election constable during the election, and he shall have the power to make arrests for disturbance of the peace, as provided by law for constables, and he shall allow no one within the voting area except those who go to vote, and shall allow but one elector in a compartment at one time. He shall remain and keep order at the polling place until all of the votes are tallied.

**History.**

1970, ch. 140, § 177, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1105 was repealed. See Prior Laws, § 34-1101.

**34-1106. Signing combination election record and poll book — Delivery of ballot to elector.** — (1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book.

(2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein and show a valid photo identification as provided for in [section 34-1113, Idaho Code](#), or personal identification affidavit as provided for in [section 34-1114, Idaho Code](#).

(3) No person shall knowingly sign his name in the combination election record and poll book if his residence address is not within that precinct at the time of signing.

(4) If the residence address of a person contained in the combination election record and poll book is incorrectly given due to an error in preparation of the combination election record and poll book, the judge shall ascertain the correct address and make the necessary correction.

(5) The elector shall then be given the appropriate ballots which have been marked with the official election ballot identification and shall be given folding instructions for such ballots.

#### **History.**

1970, ch. 140, § 178, p. 351; am. 1972, ch. 349, § 2, p. 1033; am. 2010, ch. 246, § 1, p. 634; am. 2013, ch. 285, § 6, p. 735.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 34-1106 was repealed. See Prior Laws, § 34-1101.

#### **Amendments.**

The 2010 amendment, by ch. 246, added “and show a valid photo identification as provided for in [section 34-1113, Idaho Code](#), or personal

identification affidavit as provided for in [section 34-1114, Idaho Code](#)” in subsection (2).

The 2013 amendment, by ch. 285, in subsection (5), substituted “marked” for “stamped” and “ballot identification” for “stamp.”

**34-1106A. Electronic poll book authorized.** — (1) A county may adopt the use of any electronic poll book that has been certified by the secretary of state for use in this state. A county that opts to use electronic poll books shall notify the secretary of state of that decision.

(2) The secretary of state shall develop and provide to each county that adopts the use of electronic polls books under subsection (1) of this section instructions, directives and advisories regarding the examination, testing and use of the electronic poll books.

**History.**

I.C., § 34-1106A, as added by 2015, ch. 282, § 6, p. 1147.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Effective Dates.**

Section 9 of S.L. 2015, ch. 282 declared an emergency. Approved April 6, 2015.



**34-1107. Manner of voting.** — On receipt of his ballot the elector shall retire to a vacant voting booth and mark his ballot according to the instructions provided by law.

After marking his ballot, the elector shall present himself to the judge at the ballot box and state his name and residence. The elector shall then deposit his ballot in the proper box or hand his ballot to the election judge, who shall deposit it. The judge shall then record that the elector has voted and proclaim the same in an audible voice.

**History.**

1970, ch. 140, § 179, p. 351; am. 1971, ch. 129, § 1, p. 510; am. 1972, ch. 349, § 3, p. 1033; am. 1973, ch. 304, § 12, p. 646; am. 2007, ch. 202, § 6, p. 620.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1107 was repealed. See Prior Laws, § 34-1101.

**Amendments.**

The 2007 amendment, by ch. 202, deleted the last sentence in the first paragraph, which read: “Before leaving the voting compartment the elector shall fold his ticket so that the official stamp is visible and the face of the ballot is completely inclosed”; and in the last paragraph, in the first sentence, substituted “the judge in charge of the additional copy of the combination election record and poll book” for “the judge at the ballot box,” in the second sentence, inserted “then deposit his ballot in the proper box or” and “who shall deposit it,” and deleted the former third sentence, which read: “The judge shall deposit the ballot in the proper box after ascertaining that the ballot is folded correctly.”

**Effective Dates.**

Section 2 of S.L. 1971, ch. 129 declared an emergency. Approved March 16, 1971.

## JUDICIAL DECISIONS

### Decisions Under Prior Law Marking of Ballots.

Where a voter places a cross in the square opposite a blank space on a ballot instead of opposite the name of any candidate, without writing a name in the blank space, his vote for that particular office is void; but where a voter makes a straight mark, instead of a cross, in the square opposite the name of a candidate for a certain office, such mark is sufficient to indicate his intention to vote for that candidate so that his vote may be counted, unless there is evidence that he used the mark to identify his ballot or for any purpose other than to express his intention. *Harper v. Dotson*, 32 Idaho 616, 187 P. 270 (1920).

**34-1108. Assistance to voter.** — (1) If any registered elector is unable, due to physical or other disability, to enter the polling place, he may be handed a ballot outside the polling place but within forty (40) feet thereof by one (1) of the election clerks, and in his presence but in a secret manner, mark and return the same to such election officer who shall proceed as provided by law to record the ballot.

(2) If any registered elector, who is unable by reason of physical or other disability to record his vote by personally marking his ballot and who desires to vote, then and in that case such elector shall be given assistance by the person of his choice or by one (1) of the election clerks. Such clerk or selected person shall mark the ballot in the manner directed by the elector and fold it properly and present it to the elector before leaving the voting compartment or area provided for such purpose. The elector shall then present it to the judge of election in the manner provided above.

**History.**

1970, ch. 140, § 180, p. 351; am. 1972, ch. 349, § 4, p. 1033; am. 1978, ch. 37, § 1, p. 66; am. 2010, ch. 235, § 19, p. 542.

**STATUTORY NOTES**

**Cross References.**

Voters with physical or other disability, voting by machine or vote tally system, § 34-2427.

**Prior Laws.**

Former § 34-1108 was repealed. See Prior Laws, § 34-1101.

**Amendments.**

The 2010 amendment, by ch. 235, in subsections (1) and (2), substituted “physical or other disability” for “physical disability or other handicap.”

**34-1109. Spoiled ballots.** — No person shall take or remove any ballot from the polling place. If an elector inadvertently or by mistake spoils a ballot, he shall return it folded to the distributing clerk, who shall give him another ballot. The ballot thus returned shall, without examination, be immediately cancelled by writing across the back, or outside of the ballot as folded, the words “spoiled ballot, another issued,” and deposit the spoiled ballot in a box provided for that purpose.

**History.**

1970, ch. 140, § 181, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1109 was repealed. See Prior Laws, § 34-1101.

**34-1110. Officers not to divulge information.** — No judge or clerk shall communicate to anyone any information as to the name or number on the registry list of any elector who has not applied for a ballot, or who has not voted at the polling place; and no judge, clerk or other person whomsoever, shall interfere with, or attempt to interfere with, a voter when marking his ballot. No judge, clerk or other person shall, directly or indirectly, attempt to induce any voter to display his ticket after he shall have marked the same, or to make known to any person the name of any candidate for or against whom he may have voted.

**History.**

1970, ch. 140, § 182, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1110 was repealed. See Prior Laws, § 34-1101.

**34-1111. Challenging voters.** — In case any person offering to vote is challenged one (1) of the judges must declare the qualifications of an elector to such person. If the person so challenged then declares himself duly qualified, and the challenge is not withdrawn, one (1) of the judges shall then tender him the elector's oath, as prescribed by the secretary of state. No challenged elector shall have the right to vote until he has subscribed to the elector's oath. Upon a challenged elector's subscribing the elector's oath, he shall be entitled to vote.

**History.**

1970, ch. 140, § 183, p. 351.

**STATUTORY NOTES**

**Cross References.**

Qualifications of voters, § 34-402.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-1111 was repealed. See Prior Laws, § 34-1101.

**34-1112. Handbook of elector's qualifications.** — The secretary of state shall prepare a handbook which sets forth the qualifications of an elector which shall aid the judges of election to determine whether a person is qualified to vote at the election.

A sufficient number of these handbooks shall be transmitted to each county clerk who shall provide each polling place with a sufficient number of copies.

**History.**

1970, ch. 140, § 184, p. 351; am. 1972, ch. 349, § 5, p. 1033.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-1112 was repealed. See Prior Laws, § 34-1101.

**Effective Dates.**

Section 6 of S.L. 1972, ch. 349 declared an emergency. Approved March 31, 1972.

**34-1113. Identification at the polls.** — All voters shall be required to provide personal identification before voting at the polls or at absent electors polling places as required by section 34-1006, Idaho Code. The personal identification that may be presented shall be one (1) of the following:

(1) An Idaho driver's license or identification card issued by the Idaho transportation department; (2) A passport or an identification card, including a photograph, issued by an agency of the United States government; (3) A tribal identification card, including a photograph; (4) A current student identification card, including a photograph, issued by a high school or an accredited institution of higher education, including a university, college or technical school, located within the state of Idaho; or (5) A license to carry concealed weapons issued under [section 18-3302, Idaho Code](#), or an enhanced license to carry concealed weapons issued under [section 18-3302K, Idaho Code](#).

**History.**

[I.C., § 34-1113](#), as added by 2010, ch. 246, § 2, p. 634; am. 2017, ch. 132, § 1, p. 310.

**STATUTORY NOTES**

**Cross References.**

Idaho transportation department, § 40-501 et seq.

**Prior Laws.**

Another § 34-1113 was repealed. See Prior Laws, see § 34-1101.

**Amendments.**

The 2017 amendment, by ch. 132, added subsection (5).

**Effective Dates.**

Section 2 of S.L. 2017, ch. 132 declared an emergency. Approved March 24, 2017.



## RESEARCH REFERENCES

**A.L.R.** — Voter Identification Requirements as Denying or Abridging Right to Vote on Account of Race or Color Under § 2 of Voting Rights Act, 52 U.S.C. § 10301. 12 A.L.R. Fed. 3d 4.

**34-1114. Affidavit in lieu of personal identification.** — If a voter is not able to present personal identification as required in section 34-1113, Idaho Code, the voter may complete an affidavit in lieu of the personal identification. The affidavit shall be on a form prescribed by the secretary of state and shall require the voter to provide the voter's name and address. The voter shall sign the affidavit. Any person who knowingly provides false, erroneous or inaccurate information on such affidavit shall be guilty of a felony.

**History.**

I.C., § 34-1114, as added by 2010, ch. 246, § 3, p. 634.

**STATUTORY NOTES**

**Cross References.**

Penalty for felony when not otherwise provided, § 18-112.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Another § 34-1114 was repealed. See Prior Laws, see § 34-1101.

**RESEARCH REFERENCES**

**A.L.R.** — Voter Identification Requirements as Denying or Abridging Right to Vote on Account of Race or Color Under § 2 of Voting Rights Act, 52 U.S.C. § 10301. 12 A.L.R. Fed. 3d 4.

**34-1115 — 34-1129. Purpose, construction, application of act — Ballots and voting by electors in military service. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Former §§ 34-1101 to 34-1129, which comprised 1917, ch. 142, §§ 1 to 14, p. 453; reen. C.L., §§ 32:1 to 32:14; C.S., §§ 609 to 622; am. 1923, ch. 57, § 1; am. 1937, ch. 45, §§ 1 to 6, p. 59; am. 1941, ch. 146, §§ 1, 2, p. 296; am. 1943, ch. 107, §§ 1, 2, p. 208; 1951, ch. 7, §§ 1 to 15, p. 15; am. 1953, ch. 56, § 1, p. 76; am. 1957, ch. 217, §§ 1 to 12, p. 468; am. 1959, ch. 77, § 1, p. 176; am. 1959, ch. 78, § 1, p. 176; am. 1965, ch. 189, § 1, p. 397; am. 1966 (3rd E.S.), ch. 5, § 34, p. 16, were repealed by S.L. 1970, ch. 140, § 212.



## **CHAPTER 12**

### **CANVASS OF VOTES**

#### **Section.**

34-1201. Canvass of votes.

34-1202. Comparison of poll lists and ballots — Void ballots.

34-1202A. Void ballot not counted.

34-1203. Counting of ballots — Certificates of judges.

34-1204. Transmission of supplies to county clerk.

34-1205. County board of canvassers — Meetings.

34-1206. Board's statement of votes cast.

34-1207. Abstracts of returns.

34-1208. Certificates of nomination or election.

34-1209. Certificates of election to county candidates after general election.

34-1210. Tie votes in county elections.

34-1211. State board of canvassers — Meetings.

34-1212. Examination and certification of county canvasses by state board.

34-1213. Certification of canvass of abstracts by board.

34-1214. Certificates of nomination or election to federal, state, district or nonpartisan offices after primary.

34-1215. Certificates of election to federal, state and district offices after general election.

34-1216. Tie votes — In state or district elections.

34-1217. Canvassing returns of judicial elections — Certificates of nomination or election.

**34-1201. Canvass of votes.** — (1) When the polls are closed the judges must immediately proceed to count the ballots cast at such election. The counting must be continued without adjournment until completed and the result declared.

(2) If the precinct has duplicate ballot boxes, the counting may begin after five (5) ballots have been cast. At this time, the additional clerks shall close the first ballot box and retire to the counting area and count the ballots. Upon completion of this counting, the clerks shall return the ballot box and then proceed to count all of the ballots cast in the second box during this period. This counting shall continue until the polls are closed at which time all election personnel shall complete the counting of the ballots.

(3) The county clerk may designate paper ballots be returned to a central count location for counting by special counting boards. If the paper ballots are to be counted at a central count location, a procedure may be adopted to deliver the voted ballots to the county clerk prior to the closing of the polls. The results of this early count shall not be released to the public until after 8:00 p.m. of election day.

(4) After being counted, all ballots shall be sealed and stored until such time as the recount period has passed or a recount has been completed.

### **History.**

1970, ch. 140, § 185, p. 351; am. 2011, ch. 285, § 11, p. 778; am. 2020, ch. 78, § 1, p. 168.

## **STATUTORY NOTES**

### **Cross References.**

Penalties for violations of election laws, § 18-2301 et seq.

### **Prior Laws.**

Former §§ 34-1201 and 34-1202, which comprised 1890-1891, p. 57, § 97; reen. 1899, p. 33, § 88; reen. R.C. & C.L., §§ 439, 440; C.S., §§ 623,

624; I.C.A., §§ 33-1101, 33-1102, were repealed by S.L. 1970, ch. 140, § 213.

### **Amendments.**

The 2011 amendment, by ch. 285, substituted “may begin” for “shall begin” in the first sentence in subsection (2) and added subsection (3).

The 2020 amendment, by ch. 78, added subsection (4).

### **Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

Section 2 of S.L. 2020, ch. 78 declared an emergency. Approved March 9, 2020.

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law Counting Write-in Votes.**

Write-in votes for office inserted in blank space under Republican column were required to be counted along with write-in votes inserted in blank column to determine total votes cast for write-in candidates for office. [\*McCall v. Martin\*, 74 Idaho 277, 262 P.2d 787 \(1953\)](#).

**34-1202. Comparison of poll lists and ballots — Void ballots.** — The counting must commence by comparison of the ballots and the poll lists from the commencement, and a correction of any mistake that may be found therein, until they are found to agree. The ballot box shall be opened and the ballots found therein counted by the judges, unopened and the number of ballots in the box must agree with the number marked in the poll book as having received a ballot, and this number, together with the number of spoiled ballots, must agree with the number of stubs or counterfoils in the books from which the ballots have been taken. If the number of ballots issued does not agree with the number of stubs or counterfoils, the election judges shall have authority to make any decision to correct the situation; but this shall not be construed to allow the judges to void all ballots cast at that polling place.

When duplicate ballot boxes are used in a precinct, the duties herein prescribed shall be done after all of the votes have been tallied.

**History.**

1970, ch. 140, § 186, p. 351; am. 1995, ch. 215, § 15, p. 747.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1202 was repealed. See Prior Laws, § 34-1201.

**Effective Dates.**

Section 16 of S.L. 1995, ch. 215 declared an emergency. Approved March 17, 1995.



**34-1202A. Void ballot not counted.** — At any bond election conducted by the state of Idaho, its agencies, institutions, political subdivisions and municipal and quasi-municipal corporations, any ballot or part of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted. It is hereby declared that any qualified elector casting such ballot or part of a ballot shall be deemed not to have voted at or participated in such bond election and such ballot or part of a ballot shall not be counted in determining the number of qualified electors voting at or participating in such bond election.

**History.**

I.C., § 34-1202A, as added by 1978, ch. 51, § 1, p. 96.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 1978, ch. 51 read: "All bond elections conducted by the state of Idaho, its agencies, political subdivisions and municipal and quasi-municipal corporations prior to the effective date of this act, and all proceedings had in the authorization and issuance of the bonds authorized thereat, are hereby validated, ratified and confirmed and all such bonds are declared to constitute legally binding obligations in accordance with their terms. Nothing in this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which is being contested at the time this act takes effect, or any election the legality of which is contested within the period provided by [section 34-2001A, Idaho Code](#)."

Section 3 of S.L. 1978, ch. 51 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

**Effective Dates.**

Section 4 of S.L. 1978, ch. 51 declared an emergency. Approved March 6, 1978.

**34-1203. Counting of ballots — Certificates of judges.** — (1) The ballots and polls lists agreeing, the election personnel shall then proceed to tally the votes cast. Under each office title the number of votes for each candidate and such other information required by the secretary of state shall be entered in the tally books together with the total of the above figures in the manner prescribed by the secretary of state. Any ballot or part of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted. When a ballot is sufficiently plain to determine therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

(2) Following the counting, the judges must transmit a copy of the results to the county clerk.

(3) In no event shall the results of any count be released to the public until all voting places in the state have closed on election day.

(4) The secretary of state shall issue directives or promulgate administrative rules adopting standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in this state.

### **History.**

1970, ch. 140, § 187, p. 351; am. 1981, ch. 109, § 1, p. 163; am. 2003, ch. 48, § 12, p. 181; am. 2016, ch. 272, § 1, p. 749.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

The following former sections were repealed by S.L. 1970, ch. 140, § 213:

34-1203. (1890-1891, p. 57, § 99; reen. 1899, p. 33, § 90; reen. R.C. & C.L., § 441; C.S., § 625; am. 1925, ch. 73, § 1, p. 107; I.C.A., § 33-1103.)

34-1204. (1890-1891, p. 57, § 100; reen. 1899, p. 33, § 91; am. 1901, p. 291, § 1; am. R.C., § 442; am. 1913, ch. 92, § 20, p. 379; compiled and reen. C.L., § 442; C.S., § 626; I.C.A., § 33-1104; am. 1951, ch. 114, § 1, p. 266; am. 1953, ch. 233, § 4, p. 348.)

34-1205. (1899, p. 372, § 1; reen. R.C. & C.L., § 443; C.S., § 627; I.C.A., § 33-1105.)

34-1206. (1899, p. 372, § 2; reen. R.C., § 444; am. 1913, ch. 24, § 1, p. 94; reen. C.L., § 444; C.S., § 628; I.C.A., § 33-1106.)

34-1207. (1899, p. 372, § 4; am. 1901, p. 16, § 1; reen. R.C. & C.L., § 445; C.S., § 629; I.C.A., § 33-1107.)

34-1208. (1899, p. 372, § 3; reen. R.C. & C.L., § 446; C.S., § 630; I.C.A., § 33-1108.)

34-1209. (1899, p. 372, §§ 5, 6; reen. R.C., § 447; compiled and reen. C.L., § 447; C.S., § 631; I.C.A., § 33-1109.)

34-1210. (1890-1891, p. 57, § 101; reen. 1899, p. 33, § 92; am. R.C., § 448; compiled and reen. C.L., § 448; C.S., § 632; I.C.A., § 33-1110.)

34-1211. (1890-1891, p. 57, § 102; reen. 1899, p. 33, § 93; am. R.C. & C.L., § 449; C.S., § 633; I.C.A., § 33-1111; am. 1966 (3rd E.S.), ch. 5, § 35, p. 16.)

### **Amendments.**

The 2016 amendment, by ch. 272, added the subsection designations; and rewrote present subsection (2), which formerly read: “Following the counting, the judges must post a correct copy of such results at the polling place and a copy transmitted to the county clerk”.

### **Effective Dates.**

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

**34-1204. Transmission of supplies to county clerk.** — After the counting of the votes, the judges of the election shall enclose and seal the combination election record and poll book, tally books, all ballot stubs, unused ballot books, and other supplies in a suitable container and deliver them to the county clerk's office. If the office of the county clerk is closed, the articles shall be delivered to the sheriff or one (1) of his deputies who shall deliver them to the county clerk no later than the day after the election.

**History.**

1970, ch. 140, § 188, p. 351; am. 1972, ch. 193, § 1, p. 480.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1204 was repealed. See Prior Laws, § 34-1203.

**JUDICIAL DECISIONS**

Decisions Under Prior Law Analysis

Care and custody of ballots.

Opening ballot box.

Statute directory.

**Care and Custody of Ballots.**

There was flagrant disregard of former similar section where ballots and election supplies were taken to, and kept in, office of election judge, which was open to public. *Viel v. Summers*, 35 Idaho 182, 209 P. 454 (1922).

**Opening Ballot Box.**

Former similar section applied when returns was properly made and were not returned to judges for correction. Where returns had been rejected, judges could open ballot box for purpose of correcting the returns. *Davies v. Board of County Comm'rs*, 26 Idaho 450, 143 P. 945 (1914).

### **Statute Directory.**

Statutory provisions relative to keeping ballots after an election are directory only. *Viel v. Summers*, 35 Idaho 182, 209 P. 454 (1922).

**34-1205. County board of canvassers — Meetings.** — The county board of commissioners shall be the county board of canvassers and the county clerk shall serve as their secretary for this purpose. The county board of canvassers shall meet within seven (7) days after a primary or presidential primary election and within ten (10) days after a general election for the purpose of canvassing the election returns of all precincts within the county.

**History.**

1970, ch. 140, § 189, p. 351; am. 1972, ch. 193, § 2, p. 480; am. 1975, ch. 174, § 15, p. 469; am. 2012, ch. 33, § 13, p. 103; am. 2015, ch. 292, § 9, p. 1166.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1205 was repealed. See Prior Laws, § 34-1203.

**Amendments.**

The 2012 amendment, by ch. 34, deleted “or presidential preference primary” following “primary” near the middle of the last sentence.

The 2015 amendment, by ch. 292, substituted “a primary or presidential primary” for “the primary” in the second sentence.

**Effective Dates.**

Section 15 of S.L. 2012, ch. 33 declared an emergency. Approved March 1, 2012.

**JUDICIAL DECISIONS**

Decisions Under Prior Law Authority of Board of Commissioners.

Board of commissioners, acting as board of canvassers, has no authority to declare any person elected to an office, but must make out the abstracts of votes for each office separately, and deliver them to auditor, whose duty

it is, as auditor and not as clerk of the board, to make out a certificate of election to each of the persons having the highest number of votes. [Cunningham v. George, 3 Idaho 456, 31 P. 809 \(1892\).](#)



**34-1206. Board's statement of votes cast.** — The board shall examine and make a statement of the total number of votes cast for all candidates or special questions that shall have been voted upon at the election. The statement shall set forth the special questions and the names of the candidates for whom the votes have been cast. It shall also include the total number of votes cast for each candidate for office by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code, and the total number of affirmative and negative votes cast for any special question by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the county clerk.

**History.**

1970, ch. 140, § 190, p. 351; am. 2012, ch. 211, § 7, p. 571.

**STATUTORY NOTES**

**Cross References.**

Canvass of returns of judicial elections, § 34-1217.

**Prior Laws.**

Former § 34-1206 was repealed. See Prior Laws, § 34-1203.

**Amendments.**

The 2012 amendment, by ch. 211, inserted “or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code” twice in the third sentence.

**Effective Dates.**

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

**34-1207. Abstracts of returns.** — After the canvass of the votes for each office the board shall cause the county clerk to make abstracts of the returns for each candidate which shall then be signed by each member of the board. The abstracts shall be in a form prescribed by the secretary of state and be uniform throughout the state.

The county clerk, by registered mail, shall forward to the secretary of state the abstracts for all candidates for federal, state or district offices.

**History.**

1970, ch. 140, § 191, p. 351.

**STATUTORY NOTES**

**Cross References.**

Canvass of judicial election returns, § 34-1217.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-1207 was repealed. See Prior Laws, § 34-1203.

**34-1208. Certificates of nomination or election.** — Immediately after the primary election canvass the county clerk shall issue certificates of nomination to the political party candidates of each party who receive the highest number of votes for their particular county office, and the candidates so certified shall have their names placed on the general election ballot. On or before the eighth day after the primary election canvass, the county clerk shall issue certificates of election to the precinct committeemen of each political party who receive the highest number of votes in their precinct. Provided that to be elected, a precinct committeeman shall receive a minimum of five (5) votes. In the event no candidate receives the minimum number of votes required to be elected, a vacancy in the office shall exist and shall be filled as otherwise provided by law. The county clerk shall also certify by registered mail the results of the primary election to the secretary of state. The form for such certificate shall be prescribed by the secretary of state and be uniform throughout the state.

**History.**

1970, ch. 140, § 192, p. 351; am. 1975, ch. 174, § 18, p. 469; am. 1977, ch. 17, § 1, p. 35; am. 1979, ch. 309, § 11, p. 833; am. 1991, ch. 117, § 1, p. 246; am. 2012, ch. 33, § 14, p. 103.

**STATUTORY NOTES**

**Cross References.**

Canvassing returns of judicial elections and certificates of nomination or election, § 34-1217.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-1208 was repealed. See Prior Laws, § 34-1203.

**Amendments.**

The 2012 amendment, by ch. 34, deleted “both” following “results of” and substituted “the primary election” for “the primary and the presidential

primary elections” in the fifth sentence.

**Effective Dates.**

Section 15 of S.L. 2012, ch. 33 declared an emergency. Approved March 1, 2012.

**JUDICIAL DECISIONS**

**Cited in:** Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

**34-1209. Certificates of election to county candidates after general election.** — Immediately after the general election canvass, the county clerk shall issue a certificate of election to the county candidates who received the highest number of votes for that particular office and they shall be considered duly elected to assume the duties of the office for the next ensuing term.

**History.**

1970, ch. 140, § 193, p. 351.

**STATUTORY NOTES**

**Cross References.**

Canvassing returns of judicial elections and certificates of election, § 34-1217.

**Prior Laws.**

Former § 34-1209 was repealed. See Prior Laws, § 34-1203.

**34-1210. Tie votes in county elections.** — In the case of a tie vote between candidates at a primary election or general election, the interested candidates shall appear before the county clerk within two (2) days after the canvass and the tie shall be determined by a toss of a coin.

**History.**

1970, ch. 140, § 194, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1210 was repealed. See Prior Laws, § 34-1203.

**34-1211. State board of canvassers — Meetings.** — The secretary of state, state controller and state treasurer shall constitute the state board of canvassers. The functions of the board shall be election functions, and the secretary of state shall be chairman of the board. The state board of canvassers shall meet within fifteen (15) days after the primary election and within fifteen (15) days after the general election in the office of the secretary of state for the purpose of canvassing the abstracts of votes cast for all candidates for federal, state and district offices.

**History.**

1970, ch. 140, § 195, p. 351; am. 1972, ch. 193, § 3, p. 480; am. 1974, ch. 5, § 1, p. 23; am. 1994, ch. 181, § 2, p. 575.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.`

**Prior Laws.**

Former § 34-1211 was repealed. See Prior Laws, § 34-1203.

**Effective Dates.**

Section 4 of S.L. 1972, ch. 193 declared an emergency. Approved March 21, 1972.

Section 9 of S.L. 1974, ch. 5, provided the act should be in full force and effect on and after July 1, 1974.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has

been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.” Since such amendment was adopted, the amendment to this section by § 2 of S.L. 1994, ch. 181 became effective January 2, 1995.



**34-1212. Examination and certification of county canvasses by state board.** — The board shall examine the abstracts of votes from the county canvasses and make a statement of the total number of votes cast for all federal, state and district candidates or special questions that shall have been voted upon at the election. The statement shall set forth the special questions and the names of the candidates for whom the votes have been cast. It shall also include the total number of votes cast for each candidate for office by county and legislative district, and the total number of affirmative and negative votes cast for any special question by county. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the secretary of state.

**History.**

1970, ch. 140, § 196, p. 351.

**STATUTORY NOTES**

**Cross References.**

Examination and certification of county canvass of judicial returns by state board, § 34-1217.

**JUDICIAL DECISIONS**

Decisions Under Prior Law Analysis

[Duties of board.](#)

[Statements as to results.](#)

**[Duties of Board.](#)**

Duties of state canvassing board are adding up the votes received by the several candidates, as returned by the several county boards, ascertaining total vote, and declaring and certifying the result. These are purely clerical, ministerial and administrative acts, and involve no judicial discretion. [Lansdon v. State Bd. of Canvassers, 18 Idaho 596, 111 P. 133 \(1910\).](#)

State canvassing board has power to send the returns from any county back for correction; but whether it does so, or declines to do so, it is not acting in excess of its jurisdiction to canvass the returns and declare the result. [Lansdon v. State Bd. of Canvassers, 18 Idaho 596, 111 P. 133 \(1910\)](#).

It is not the business of the state board to determine whether or not any illegal votes have been cast. [Lansdon v. State Bd. of Canvassers, 18 Idaho 596, 111 P. 133 \(1910\)](#).

### **Statements as to Results.**

It is not necessary for the state board of canvassers to declare in terms whether, in their opinion, any amendment to the constitution has been adopted or not. [Hays v. Hays, 5 Idaho 154, 47 P. 732 \(1897\)](#).

**34-1213. Certification of canvass of abstracts by board.** — After the canvass of the abstracts, the board shall make a statement of the total number of votes cast at any such election for all the candidates for federal, state or district offices, which statement shall show the names of the persons to whom such votes shall have been cast for the particular offices and the total number cast to each, distinguishing the several districts, counties and precincts in which they were given. They shall certify such statement to be correct, and subscribe their names thereto.

**History.**

1970, ch. 140, § 197, p. 351.

**34-1214. Certificates of nomination or election to federal, state, district or nonpartisan offices after primary.** — (1) Immediately after the primary election canvass, the secretary of state shall issue certificates of nomination to the political party candidates of each party who receive the highest number of votes for their particular federal, state or district office. The candidates so certified shall have their names placed on the general election ballot.

(2) Immediately after the primary election canvass, the secretary of state shall issue certificates of nomination to the nonpartisan candidate or candidates who receive the highest number of votes for the number of vacancies which are to be filled for a particular office and also to the same number of candidates who receive the second highest number of votes for the particular office. The candidates so certified shall have their names placed on the general election ballot. If it appears from the canvass that a particular candidate has received a majority of the total vote cast for the particular office, he shall be issued a certificate of election instead of a certificate of nomination and no candidates shall run for the particular office in the general election.

**History.**

1970, ch. 140, § 198, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**JUDICIAL DECISIONS**

**Cited in:** Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

**34-1215. Certificates of election to federal, state and district offices after general election.** — Immediately after the general election canvass, the secretary of state shall issue certificates of election to the federal, state and district candidates who received the highest number of votes for the particular office and they shall be considered duly elected to assume the duties of the office for the next ensuing term.

**History.**

1970, ch. 140, § 200, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**34-1216. Tie votes — In state or district elections.** — In the case of a tie vote between the candidates at a primary or general election, the interested parties or their authorized agents shall appear before the secretary of state within two (2) days after the canvass and the tie shall be determined by a toss of a coin.

**History.**

1970, ch. 140, § 201, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Effective Dates.**

Section 218 of S.L. 1970, ch. 140 declared an emergency and provided that new chapter 24, and the repeal of old chapter 24, of title 34 should be effective after passage. Approved March 10, 1970.

Section 219 of S.L. 1970, ch. 140 provided that chapters 1 through 7 and chapters 9 through 12, and the repeals of old chapters 1 through 14 and chapter 16, of title 34 should be effective January 1, 1971.

**34-1217. Canvassing returns of judicial elections — Certificates of nomination or election.** — The board of county commissioners shall canvass the returns of the judicial nominating election at the time the returns of the primary election are canvassed, shall determine, and cause the county clerk to certify to the secretary of state, the result of said judicial nominating election. In such certificate the clerk shall set forth, following the name of each justice of the supreme court and each district judge for whom a successor is to be elected at the general election in that year, the vote received by each person who had declared himself to be, and who had been voted for as, a candidate to succeed such justice or district judge.

The returns so made to the secretary of state by the county clerk shall be canvassed by the state board of canvassers at the time the other returns of said primary election are canvassed.

If it appears to the state board of canvassers upon the official canvass that at such judicial nominating election any candidate received a majority of all the votes cast for candidates to succeed a particular justice of the supreme court or district judge, said board shall certify to the secretary of state as duly elected to such office the name of the candidate who received such majority and such candidate whose name is so certified shall receive and the secretary of state shall issue and deliver to him a certificate of election to such office and he shall not be required to stand for election at the general election following.

In the event no candidate received a majority of all votes cast for candidates to succeed a particular justice of the supreme court or a particular district judge, the two (2) candidates receiving the greater number of votes cast for all candidates to succeed such justice of the supreme court or such district judge shall be and shall be declared to be nominees to succeed such justice or such district judge and their names as such nominees shall be placed on the official judicial ballot at the general election next following. The secretary of state shall certify the names of such nominees, including with each the name of the incumbent in office whom such candidates were nominated to succeed, to the county clerks at the time he certifies the names of candidates for other offices certified by

him; provided, however, if another be appointed to succeed the incumbent person named on such judicial nominating ballot, the secretary of state shall insert in such certificate or in amendment thereto the name of the appointee in the place of the name of the incumbent person named on such judicial nominating ballot.

**History.**

1970, ch. 231, § 12, p. 643; am. 1971, ch. 131, § 1, p. 513.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

State board of canvassers, § 34-1211.

**Effective Dates.**

Section 13 of S.L. 1970, ch. 231 provided that the act should take effect January 1, 1971.

Section 2 of S.L. 1971, ch. 131 declared an emergency. Approved March 16, 1971.





**CHAPTER 13**  
**STATE BOARD OF CANVASSERS**

Section.

34-1301 — 34-1307. [Repealed.]

**34-1301 — 34-1307. Duties and procedures of the board. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This chapter, which comprised 1890-1891, p. 57, §§ 103 to 109; am. 1895, p. 90, § 1; reen. 1899, p. 33, §§ 94 to 100; reen. R.C., §§ 450, 452, 454, 456; am. R.C., §§ 451, 453, 455; C.L., §§ 452 to 456; reen. C.L., §§ 450, 451; C.S., §§ 634 to 640; I.C.A., §§ 33-1201 to 33-1207, was repealed by S.L. 1970, ch. 140, § 214. For present comparable provisions, see §§ 34-1211 to 34-1217.



## **CHAPTER 14**

### **UNIFORM DISTRICT ELECTION LAW**

#### **Section.**

34-1401. Election administration.

34-1402. Registration.

34-1403. Conduct of elections.

34-1404. Declaration of candidacy.

34-1405. Notice of election filing deadline.

34-1405A. Withdrawal of candidacy.

34-1406. Notice of election.

34-1407. Write-in candidates.

34-1408. Absentee ballots.

34-1409. Conduct of election on election day.

34-1410. Canvassing of election results.

34-1411. Payment of election expenses by county.

34-1412. Terms of office going beyond next election date.

34-1413. Procedures for certain political subdivision elections to modify voting procedures.

**34-1401. Election administration.** — Notwithstanding any provision to the contrary, the county clerk shall administer all elections on behalf of any political subdivision, subject to the provisions of this chapter, including all special district elections and elections of special questions submitted to the electors as provided in this chapter. Water districts governed by chapter 6, title 42, Idaho Code, recreational water and/or sewer districts as defined in section 42-3202A, Idaho Code, ground water recharge districts governed by chapter 42, title 42, Idaho Code, ground water management districts governed by chapter 51, title 42, Idaho Code, ground water districts governed by chapter 52, title 42, Idaho Code, and irrigation districts governed by title 43, Idaho Code, are exempt from the provisions of this chapter. Municipal elections shall be conducted under the provisions of this chapter except for the specific provisions of chapter 4, title 50, Idaho Code. All school district and highway district elections shall be conducted pursuant to the provisions of this chapter 14, title 34, Idaho Code. All highway district and school district elections shall be administered by the clerk of the county wherein the district lies. Elections in a joint school district or other political subdivisions that extend beyond the boundaries of a single county shall be conducted jointly by the clerks of the respective counties, and the clerk of the home county shall exercise such powers as are necessary to coordinate the election. “Home county” shall be defined as the county in which the business office for the district or political subdivision is located. For the purposes of achieving uniformity, the secretary of state shall, from time to time, provide directives and instructions to the various county clerks. Unless a specific exception is provided in this chapter, the provisions of this chapter shall govern in all questions regarding the conduct of elections on behalf of all political subdivisions. In all matters not specifically covered by this chapter, other provisions of title 34, Idaho Code, governing elections shall prevail over any special provision which conflicts therewith.

The county clerk shall conduct the elections for political subdivisions and shall perform all necessary duties of the election official of a political subdivision including, but not limited to, notice of the filing deadline, notice of the election, and preparation of the election calendar.

## **History.**

**I.C., § 34-1401**, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 5, p. 1157; am. 1993, ch. 379, § 1, p. 1392; am. 1996, ch. 298, § 1, p. 977; am. 2009, ch. 341, § 59, p. 993; am. 2010, ch. 185, § 9, p. 382; am. 2011, ch. 11, § 15, p. 24.

## **STATUTORY NOTES**

### **Prior Laws.**

Former §§ 34-1401, 34-1402, which comprised 1890-1891, p. 57, §§ 116, 117; reen. 1899, §§ 103, 104; am. R.C., § 457; reen. R.C., § 458; C.L., §§ 457, 458; C.S., §§ 641, 642; I.C.A., §§ 33-1301, 33-1302, were repealed by S.L. 1970, ch. 140, § 215.

### **Amendments.**

This section was amended by two 1993 acts which appear to be compatible and have been compiled together.

The 1993 amendment, by ch. 313, § 5, in the first sentence of the first paragraph deleted “municipal elections,” preceding “special district elections”; deleted the comma preceding “and elections of special questions”; added the third sentence of the first paragraph; and in the first sentence of the last paragraph added “all or part of” following “county clerk to conduct”.

The 1993 amendment, by ch. 379, § 1, in the first sentence of the first paragraph deleted “municipal elections,” preceding “special district elections”; in the second sentence of the first paragraph added “and municipal elections governed by the provisions of chapter 4, title 50, Idaho Code,” preceding “are exempt from the provisions”; and in the first sentence of the last paragraph added “all or part of” following “county clerk to conduct”.

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 185, in the first paragraph, inserted “recreational water and/or sewer districts as defined in **section 42-3202A, Idaho Code**” in the second sentence, inserted “or other political

subdivisions that extend beyond the boundaries of a single county” in the fifth sentence, and added the sixth sentence.

The 2011 amendment, by ch. 11, in the first paragraph, inserted the third sentence and deleted “municipal” following “All” at the beginning of the fourth sentence.

### **Legislative Intent.**

Section 1 of S.L. 1992, ch. 176 read: “It is the finding of the legislature that the process of exercising the elective franchise should be made as accessible as possible for as many citizens as possible. The provisions of this bill will achieve a significant consolidation of elections on four (4) election dates in each year. In addition, this election code, which applies to the various political subdivisions of the state of Idaho, will assure access to the nominating process, registration of potential electors, absentee voting opportunity and an increased visibility of the electoral process to assure public access and increase participation. At a future date, it may be warranted to further consolidate elections as events demonstrate that need. The goal of providing increased visibility for the electoral process will be well served by this consolidation of elections, by the increased public notice of filing and election deadlines, and the public education which will accompany the implementation of this act.”

### **Effective Dates.**

Section 7 of S.L. 1992, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1994, except that the provisions of Section 6 [appropriation] of this act shall be in full force and effect on and after July 1, 1992.”

Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

Section 6 of S.L. 1993, ch. 379 provided that the act shall be in full force and effect on January 1, 1994.

Section 10 of S.L. 1996, ch. 298 declared an emergency. Approved March 18, 1996.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

## **JUDICIAL DECISIONS**

**Cited in:** Brannon v. City of Coeur d'Alene, 153 Idaho 843, 292 P.3d 234 (2012).

**34-1402. Registration.** — All electors must register with the county clerk before being able to vote in any primary, general, special or any other election conducted in this state. The county clerk shall determine, for each registered elector, the elections for which he is eligible to vote by a determination of the applicable code areas. The determination of tax code area shall be made for all political subdivisions including those otherwise exempt from the provisions of this chapter.

The county clerk shall conform to the provisions of chapter 4, title 34, Idaho Code, in the administration of registration for all political subdivisions within the county.

**History.**

I.C., § 34-1402, as added by 1992, ch. 176, § 4, p. 553; am. 2003, ch. 48, § 13, p. 181; am. 2011, ch. 285, § 12, p. 778.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1402 was repealed. See Prior Laws, § 34-1401.

**Amendments.**

The 2011 amendment, by ch. 285, deleted the former last sentence in the second paragraph, which read: “The county clerk shall appoint each city clerk for any city within the county and each election official designated by a political subdivision, as an at-large registrar as provided in [section 34-406, Idaho Code](#), except that no compensation shall be paid by the county clerk for electors registered by these special registrars.”

**Effective Dates.**

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

**34-1403. Conduct of elections.** — All elections conducted in this state on behalf of each political subdivision within the county shall be conducted in a uniform manner with regard to the qualifications of electors and shall be conducted on the dates as provided by law. In the event that a statute governing a political subdivision provides for qualifications more restrictive than the qualifications for an elector in section 34-402, Idaho Code, the election official of the district shall provide an elector's oath to be executed at the time of the election certifying to the elector's qualifications for the specific election.

**History.**

**I.C., § 34-1403**, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 6, p. 1157.

**34-1404. Declaration of candidacy.** — Candidates for election in any political subdivision shall be nominated by nominating petitions, each of which shall bear the name of the nominee, the office for which the nomination is made, the term for which nomination is made, bear the signature of not less than five (5) electors of the candidate's specific zone or district of the political subdivision, and be filed with the clerk of the political subdivision. The form of the nominating petition shall be as provided by the county clerk and shall be uniform for all political subdivisions. For an election to be held on the third Tuesday in May, in even-numbered years, the nomination petition shall be filed during the period specified in section 34-704, Idaho Code. The clerk of the political subdivision shall verify the qualifications of the nominees and shall, no more than seven (7) days after the close of filing, certify the nominees to be placed on the ballot of the political subdivision. For an election to be held on the first Tuesday after the first Monday of November, in even-numbered years, the nomination shall be filed on or before September 1. The clerk of the political subdivision shall verify the qualifications of the nominees and shall, not later than seven (7) days after the close of filing, certify the nominees to be placed on the ballot of the political subdivisions. For all other elections, the nomination shall be filed not later than 5:00 p.m. on the ninth Friday preceding the election for which the nomination is made. The clerk of the political subdivision shall verify the qualifications of the nominee and shall, not more than seven (7) days following the filing, certify the nominees to be placed on the ballot of the political subdivision.

**History.**

I.C., § 34-1404, as added by 1993, ch. 313, § 8, p. 1157; am. 2009, ch. 341, § 60, p. 993; am. 2010, ch. 185, § 10, p. 382; am. 2011, ch. 11, § 16, p. 24; am. 2014, ch. 162, § 3, p. 455.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1404, which comprised S.L. 1992, ch. 176, § 4, effective January 1, 1994, was repealed by S.L. 1993, ch. 313, § 7, effective January

1, 1994.

### **Amendments.**

The 2009 amendment, by ch. 341, substituted “third Tuesday” for “fourth Tuesday” in the third sentence.

The 2010 amendment, by ch. 185, substituted “clerk of the political subdivision” for “election official of the political subdivision” in the first sentence.

The 2011 amendment, by ch. 11, substituted “The clerk of the political subdivision” for “The election official” at the beginning of the fourth, sixth and eighth sentences and substituted “ninth Friday” for “sixth Friday” near the middle of the seventh sentence.

The 2014 amendment, by ch. 162, substituted “to be placed on the ballot” for “and any special questions placed by action of the governing board” in the fourth and sixth sentences and deleted “and any special questions, placed by action of the governing board of the political subdivisions” following “the nominees” in the last sentence.

### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

**34-1405. Notice of election filing deadline.** — (1) Not more than fourteen (14) nor less than seven (7) days preceding the candidate filing deadline for an election, the county clerk shall cause to be published a notice of the forthcoming candidate filing deadline for all taxing districts. The notice shall include not less than the name of the political subdivision, the place where filing for each office takes place, and a notice of the availability of declarations of candidacy. The notice shall be published in the official newspaper of the political subdivision.

(2) The secretary of state shall compile an election calendar annually which shall include not less than a listing of the political subdivisions which will be conducting candidate elections in the forthcoming year, the place where filing for each office takes place, and the procedure for a declaration of candidacy. Annually in December, the county clerk shall cause to be published the election calendar for the county for the following calendar year. This publication shall be in addition to the publication required by paragraph [subsection] (1) of this section. The election calendar for the county shall be published in at least two (2) newspapers published within the county, but if this is not possible, the calendar shall be published in one (1) newspaper which has general circulation within the county. Copies of the election calendar shall be available, without charge, from the office of the secretary of state or the county clerk.

### **History.**

I.C., § 34-1405, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 9, p. 1157; am. 2009, ch. 341, § 61, p. 993.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Amendments.**

The 2009 amendment, by ch. 341, added the subsection (1) designation, and therein substituted “county clerk” for “election official of each political

subdivision,” and added “for all taxing districts” in the first sentence; and deleted the former third and fourth sentences, which read: “It shall be the duty of the election official of each political subdivision to notify the county clerk, not later than the last day of November, of any election for that political subdivision to occur during the next calendar year. In the event of failure to so notify the county clerk, the election official of the political subdivision shall cause to be published notice of the omitted election as soon as he is aware of the omission.”

**Compiler’s Notes.**

The bracketed insertion in the third sentence in subsection (2) was added by the compiler to conform to the standard designation scheme for the Idaho Code.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**34-1405A. Withdrawal of candidacy.** — A candidate for nomination or candidate for election to an office may withdraw from the election by filing a notarized statement of withdrawal with the officer with whom his declaration of candidacy was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. A candidate may not withdraw later than forty-six (46) days before an election.

**History.**

I.C., § 34-1405A, as added by 2011, ch. 11, § 17, p. 24; am. 2019, ch. 96, § 12, p. 344.

**STATUTORY NOTES**

**Amendments.**

The 2019 amendment, by ch. 96, substituted “forty-six (46) days” for “forty-five (45) days” near the end of the last sentence.

**Effective Dates.**

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.



**34-1406. Notice of election.** — The county clerk shall give notice for each political subdivision for any election by publishing such notice in the official newspaper of the county. The notice shall state the date of the election, the polling places, and the hours during which the polls shall be open for the purpose of voting. The first publication shall be made not less than twelve (12) days prior to the election, and the last publication of notice shall be made not less than five (5) days prior to the election. For each primary, general and special election, the county clerk shall cause to be published a facsimile, except as to size, of the sample ballot in at least two (2) newspapers published within the county, but if this is not possible, the sample ballot shall be published in one (1) newspaper published within the county or one (1) newspaper that has general circulation within the county. Such publication shall be in conjunction with the second notice of election required by this section. The political subdivision shall notify the county clerk in writing of the official newspaper of the political subdivision.

### **History.**

I.C., § 34-1406, as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 10, p. 1157; am. 2009, ch. 341, § 62, p. 993; am. 2011, ch. 11, § 18, p. 24.

## **STATUTORY NOTES**

### **Amendments.**

The 2009 amendment, by ch. 341, in the first sentence, substituted “county clerk” for “election official of each political subdivision,” inserted “for each political subdivision,” and substituted “newspaper of the county” for “newspaper of the political subdivision”; and added the last three sentences.

The 2011 amendment, by ch. 11, substituted “official newspaper of the political subdivision” for “county’s newspaper” at the end of the last sentence.

### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

**34-1407. Write-in candidates.** — (1) No write-in candidate for any nonpartisan elective office shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of the office. The declaration of intent shall be filed with the clerk of the political subdivision by no later than the eighth Friday before the date of the election.

(2) If the statutes governing elections within a specific political subdivision provide that no election shall be held in the event that no more than one (1) candidate has filed for an office, that statute shall be interpreted in such a manner as to allow for filing a declaration of intent for a write-in candidate until the eighth Friday preceding the election. However, if no candidate has filed within that time, no election shall be held for that political subdivision. The provisions of this section shall not apply to candidates in the primary or general election covered by the provisions of [section 34-702A, Idaho Code](#).

### **History.**

[I.C., § 34-1407](#), as added by 1992, ch. 176, § 4, p. 553; am. 1993, ch. 313, § 11, p. 1157; am. 1997, ch. 362, § 1, p. 1069; am. 2011, ch. 11, § 19, p. 24; am. 2019, ch. 96, § 13, p. 344; am. 2020, ch. 69, § 5, p. 157.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 11, substituted “clerk of the political subdivision” for “election official” in the last sentence of the first paragraph and substituted “forty-five (45) days” for “twenty-five (25) days” in the last sentence of the first paragraph and near the end of the first sentence of the second paragraph.

The 2019 amendment, by ch. 96, added the subsection designators to the existing provisions of the section; substituted “by no later than the seventh Friday” for “not less than forty-five (45) days” near the end of the last sentence in subsection (1); and substituted “the seventh Friday” for “forty-five (45) days” near the end of the first sentence in subsection (2).

The 2020 amendment, by ch. 69, substituted “eighth Friday” for “seventh Friday” near the end of subsection (1) and near the end of the first sentence in subsection (2).

**Effective Dates.**

Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

**34-1408. Absentee ballots.** — Any registered elector may vote at any election by absentee ballot as provided in chapter 10, title 34, Idaho Code. In the event of a written application to the county clerk for an absentee ballot, the application shall be deemed to be an application for all ballots to be voted in the election, and the county clerk shall provide the ballot of the political subdivision to the elector.

**History.**

I.C., § 34-1408, as added by 1992, ch. 176, § 4, p. 553; am. 2010, ch. 185, § 11, p. 382.

**STATUTORY NOTES**

**Amendments.**

The 2010 amendment, by ch. 185, deleted “notify the election official of each political subdivision conducting an election at that date, and the election official shall” following “and the county clerk shall” in the second sentence.

**34-1409. Conduct of election on election day.** — At all elections conducted by any political subdivision, the polls shall be opened at 8:00 a.m. and remain open until all registered electors of that precinct have appeared and voted or until 8:00 p.m. of the same day, whichever comes first. However, the election official may, at his option, open the polls in his jurisdiction at 7:00 a.m.

All political subdivisions conducting elections on the same date shall, whenever practicable, use the same polling places.

**History.**

I.C., § 34-1409, as added by 1992, ch. 176, § 4, p. 553.

**34-1410. Canvassing of election results.** — The board of county commissioners shall conduct the canvass of the election results within ten (10) days after the election, in the manner provided in chapter 12, title 34, Idaho Code. The county clerk shall certify the election results to the clerk of each political subdivision for which an election was held. Each political subdivision shall issue the appropriate certificates of election.

**History.**

I.C., § 34-1410, as added by 1992, ch. 176, § 4, p. 553; am. 2010, ch. 185, § 12, p. 382; am. 2011, ch. 11, § 20, p. 24.

**STATUTORY NOTES**

**Amendments.**

The 2010 amendment, by ch. 185, in the first sentence, substituted “The board of county commissioners” for “Each political subdivision”; and added the second sentence.

The 2011 amendment, by ch. 11, inserted “within ten (10) days after the election” in the first sentence.

**Effective Dates.**

Section 7 of S.L. 1992, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1994, except that the provisions of Section 6 [appropriation] of this act shall be in full force and effect on and after July 1, 1992.”

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

**34-1411. Payment of election expenses by county.** — (1) On and after January 1, 2011, no county shall charge any taxing district, as defined in section 63-201, Idaho Code, for expenses associated with conducting any election on behalf of any taxing district, with the exception of expenses associated with conducting municipal runoff elections, which shall be paid by the city adopting runoff elections pursuant to the provisions of section 50-612 or 50-707B, Idaho Code. Expenses associated with conducting taxing district elections shall include:

- (a) Costs of ballot preparation, distribution, printing and counting, including absentee ballots.
- (b) Costs of printing poll books and costs of tally books, stamps, signs and any other voting supplies, publications and equipment.
- (c) Wages or other compensation for election judges and clerks or any county employees or officials performing duties associated with conducting taxing district elections.
- (d) Costs paid for renting polling facilities.
- (e) Acquisition, repair, maintenance or any other costs associated with voting machines or vote tally systems as defined in subsections (9) and (10) of [section 34-2401, Idaho Code](#).
- (f) Costs of publishing and printing election notices and ballots.

(2) Counties shall not be responsible for any election expenses prior to the time any taxing district orders an election, such as notice and costs for public hearings and notice and costs for public hearings on ballot measures.

(3) Notwithstanding the provisions of subsection (1) of this section, all ballot questions shall be limited to two hundred fifty (250) words or less. If a ballot question is in excess of two hundred fifty (250) words, the entity proposing a ballot question that is not a state constitutional amendment shall be required to pay the ballot printing costs associated with the ballot question.

**History.**



I.C., § 34-1411, as added by 2009, ch. 341, § 63, p. 993.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

## **RESEARCH REFERENCES**

**A.L.R.** — Validity of runoff voting election methodology. 67 A.L.R.6th 609.

**34-1412. Terms of office going beyond next election date. —** Notwithstanding any other provision of law to the contrary, whenever a member of the governing board of a taxing district has been elected to a term of office that goes beyond the next election date as provided by statute, such member of the governing board shall be entitled to serve his or her term of office and shall continue to serve until the following election provided by statute. All governing board members elected on and after January 1, 2011, shall serve terms of office beginning and ending as otherwise provided by statute.

**History.**

I.C., § 34-1412, as added by 2011, ch. 11, § 21, p. 24.

**STATUTORY NOTES**

**Effective Dates.**

Section 27 of S.L. 2011, ch. 11 declared an emergency and made this section retroactive to January 1, 2011. Approved February 23, 2011.

**34-1413. Procedures for certain political subdivision elections to modify voting procedures.** — Any county that wishes to modify voting procedures for a political subdivision election shall submit an election plan to the secretary of state for approval for the modified voting procedures to be effective at least forty (40) calendar days prior to an election. The secretary of state shall notify the political subdivision of its approval, disapproval and, if it is disapproved, what remedial measures may be taken that would allow for approval of the voting plan.

**History.**

I.C., § 34-1413, as added by 2011, ch. 285, § 13, p. 778; am. 2014, ch. 162, § 4, p. 455.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2014 amendment, by ch. 162, in the first sentence, deleted “has a political subdivision in which there is more than one (1) county contained in the political subdivision boundaries and that” preceding “wishes” and inserted “for a political subdivision election”.

**Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.



## **CHAPTER 15**

### **PRESIDENTIAL ELECTORS**

Section.

34-1501. Certificates of election.

34-1502. Election for presidential electors.

34-1503. Meeting of electors.

34-1504. Notice to governor — Vacancies, how filled.

34-1505. Filling vacancies — Tie vote.

34-1506. Notification of election to fill vacancy.

34-1507. Compensation and mileage of electors.

**34-1501. Certificates of election.** — The secretary of state shall prepare lists of the names of the electors of president and vice-president of the United States, elected at any election, procure thereto the signature of the governor, affix the seal of the state to the same, and deliver one (1) of such certificates thus signed to each of said electors on or before the second Wednesday in December next after such election.

**History.**

1890-1891, p. 57, § 110; reen. 1899, p. 33, § 101; reen. R.C. & C.L., § 459; C.S., § 643; I.C.A., § 33-1401.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**JUDICIAL DECISIONS**

**Status of Electors.**

Presidential electors are not state officers. *State ex rel. Spofford v. Gifford*, 22 Idaho 613, 126 P. 1060 (1912).

**34-1502. Election for presidential electors.** — There shall be an election held in this state for the election of such electors, at the times appointed by any law of the Congress or the Constitution of the United States for such election, and when such election shall be special, the same shall be called and held, and the votes polled and canvassed, in all respects as at a general election, and the duties of the electors so elected shall be the same as prescribed by law for electors elected at a general election.

**History.**

1890-1891, p. 57, latter part of § 115; reen. 1899, p. 33, § 102; am. R.C. & C.L., § 460; C.S., § 644; I.C.A., § 33-1402.

**JUDICIAL DECISIONS**

**Method of Nominating.**

Methods of nominating candidates for presidential electors. See [State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 P. 1060 \(1912\).](#)

**34-1503. Meeting of electors.** — The electors chosen to elect a president and vice-president of the United States shall, at twelve (12) o'clock noon on the day which is or may be directed by the Congress of the United States, meet at the seat of government of this state, and then and there perform the duties enjoined upon them by the Constitution and laws of the United States.

**History.**

1890-1891, p. 57, § 111; reen. 1899, p. 66, § 1; am. R.C. & C.L., § 461; C.S., § 645; I.C.A., § 33-1403.

**STATUTORY NOTES**

**Cross References.**

Constitutional provisions, [U. S. Const., Amend. XII](#) and [Amend. XX](#).

**JUDICIAL DECISIONS**

**One Meeting Only.**

Presidential electors have no regular terms of office, but discharge their duties at one meeting. [State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 P. 1060 \(1912\)](#).



**34-1504. Notice to governor — Vacancies, how filled.** — Each elector of president and vice-president of the United States shall, before the hour of twelve (12) o'clock on the day next preceding the day fixed by the law of Congress to elect a president and vice-president, give notice to the governor that he is at the seat of government and ready at the proper time to perform the duties of an elector; and the governor shall forthwith deliver to the electors present a certificate of all the names of the electors; and if any elector named therein fails to appear before nine (9) o'clock on the morning of the day of election of president and vice-president as aforesaid, the electors then present shall immediately proceed to elect, by ballot, in the presence of the governor, persons to fill such vacancies.

**History.**

1890-1891, p. 57, § 112; reen. 1899, p. 66, § 2; am. R.C. & C.L., § 462; C.S., § 646; I.C.A., § 33-1404.

**34-1505. Filling vacancies — Tie vote.** — If more than the number of persons required to fill the vacancies, as aforesaid, have the highest and an equal number of votes, then the governor, in the presence of the electors attending, shall decide by lot which of said persons shall be elected; otherwise they, to the number required, having the greatest number of votes, shall be considered elected to fill such vacancies.

**History.**

1890-1891, p. 57, § 113; reen. 1899, p. 66, § 3; reen. R.C. & C.L., § 463; C.S., § 647; I.C.A., § 33-1405.

**34-1506. Notification of election to fill vacancy.** — Immediately after such choice is made the names of the persons so chosen shall forthwith be certified to the governor by the electors making such choice; and the governor shall cause immediate notice to be given in writing to the electors chosen to fill such vacancies; and the said persons so chosen shall be electors, and shall meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined on them as electors aforesaid by the Constitution and laws of the United States and of this state.

**History.**

1890-1891, p. 57, § 114; reen. 1899, p. 66, § 4; reen. R.C. & C.L., § 464; C.S., § 648; I.C.A., § 33-1406.

**34-1507. Compensation and mileage of electors.** — Every elector of this state for the election of president and vice president of the United States, hereafter elected, who shall attend and give his vote for those offices at the time and place appointed by law, shall be compensated as provided by section 59-509(d), Idaho Code.

**History.**

1890-1891, p. 57, § 115; reen. 1899, p. 66, § 5; am. R.C. & C.L., § 465; C.S., § 649; I.C.A., § 33-1407; am. 1980, ch. 247, § 28, p. 582.



## **CHAPTER 16**

### **SPECIAL ELECTIONS**

Section.

34-1601 — 34-1605. [Repealed.]

**34-1601 — 34-1605. Conduct of special elections — Meetings of canvassing boards. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This chapter, which comprised 1890-1891, p. 57, §§ 16, 24, 177 to 179; reen. 1899, p. 33, §§ 157 to 161; reen. R.C., §§ 480, 481, 483, 484; am. R.C., § 482; C.L., §§ 480 to 484; C.S., §§ 664-668; I.C.A., §§ 33-1501 to 33-1505; am. 1965, ch. 111, § 1, p. 217, was repealed by S.L. 1970, ch. 140, § 216.





## **CHAPTER 17**

### **RECALL ELECTIONS**

#### **Section.**

34-1701. Officers subject to recall.

34-1702. Required signatures on petition.

34-1703. Form of petition.

34-1704. Printing of petition and sheets for signatures — Time limits for perfecting petition.

34-1705. Verification on sheets for signatures.

34-1706. Examination and certification of signatures.

34-1707. Sufficiency of petition — Notification — Effect of resignation — Special election.

34-1708. Form of recall ballot.

34-1709. Officer to continue in office.

34-1710. Conduct of special recall election.

34-1711. Canvass of returns.

34-1712. General election laws control.

34-1713. Time within which recall may be filed — Removal of signatures.

34-1714. Prohibited acts — Penalties.

34-1715. Refusal to accept petition — Mandate — Injunction.

34-1716 — 34-1727. [Repealed.]

**34-1701. Officers subject to recall.** — The following public officers, whether holding their elective office by election or appointment, and none other, are subject to recall:

(1) State officers:

(a) The governor, lieutenant-governor, secretary of state, state controller, state treasurer, attorney general, and superintendent of public instruction;

(b) Members of the state senate, and members of the state house of representatives.

(2) County officers:

(a) The members of the board of county commissioners, sheriff, treasurer, assessor, prosecuting attorney, clerk of the district court, and coroner.

(3) City officers:

(a) The mayor;

(b) Members of the city council.

(4) Special district elected officers for whom recall procedure is not otherwise provided by law.

### **History.**

**I.C., § 34-1701**, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 1, p. 302; am. 1994, ch. 181, § 3, p. 575; am. 1995, ch. 266, § 1, p. 848.

## **STATUTORY NOTES**

### **Prior Laws.**

Former §§ 34-1701 to 34-1715, which comprised S.L. 1933, ch. 209, §§ 1 to 15, were repealed by S.L. 1972, ch. 283, § 1.

### **Compiler's Notes.**

This section was enacted by S.L. 1972, Chapter 238 with a paragraph (2) (a), but no paragraph (2)(b).

### **Effective Dates.**

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.” Since such amendment was adopted, the amendment to this section by § 3 of S.L. 1994, ch. 181 became effective January 2, 1995.

### **RESEARCH REFERENCES**

**Idaho Law Review.** — Legislative Power at Odds: The Effect of a Referendum Petition in Idaho, Comment. 48 Idaho L. Rev. 553 (2012).

**A.L.R.** — Constitutionality of state and local recall provisions. 13 A.L.R.6th 661.

**34-1702. Required signatures on petition.** — A petition for recall of an officer shall be instituted by filing with the appropriate official a verified written petition requesting such recall.

(1) If the petition seeks recall of any of the officers named in subsection (1)(a) of [section 34-1701, Idaho Code](#), the petition shall be filed with the secretary of state, and must be signed by registered electors equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held to elect a governor.

(2) If the petition seeks recall of any of the officers named in subsection (1)(b) of [section 34-1701, Idaho Code](#), the petition shall be filed with the secretary of state, and must be signed by registered electors of the legislative district equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the legislative district at which the member was elected.

(3) If the petition seeks recall of any of the officers named in subsection (2)(a) of [section 34-1701, Idaho Code](#), the petition shall be filed with the county clerk, and must be signed by registered electors of the county equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the county for the election of county officers at which the officer was elected.

(4) If the petition seeks recall of any of the officers named in subsection (3) of [section 34-1701, Idaho Code](#), the petition shall be filed with the city clerk, and must be signed by registered electors of the city equal in number to twenty percent (20%) of the number of electors registered to vote at the last general city election held in the city for the election of officers.

(5) If the petition seeks recall of any of the officers named in subsection (4) of [section 34-1701, Idaho Code](#), the petition shall be filed with the county clerk of the county wherein the district is located. If the district is located in two (2) or more counties, the clerk in each county shall perform the functions within that county. The petition must be signed by registered electors of the district or school trustee zone equal in number to fifty percent (50%) of the number of electors who cast votes in the last election

of the district or school trustee zone. If no district election has been held in the last six (6) years, the petition must be signed by twenty percent (20%) of the number of electors registered to vote in the district or school trustee zone at the time the petition is filed.

**History.**

**I.C., § 34-1702**, as added by 1972, ch. 283, § 3, p. 703; am. 1995, ch. 266, § 2, p. 848; am. 2003, ch. 57, § 1, p. 200; am. 2012, ch. 211, § 8, p. 571.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-1702 was repealed. See Prior Laws, § 34-1701.

**Amendments.**

The 2012 amendment, by ch. 211, inserted “or school trustee zone” three times in the last two sentences in subsection (5).

**Effective Dates.**

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

**JUDICIAL DECISIONS**

**Cited in:** **West v. Cenarrusa, 95 Idaho 822, 520 P.2d 1088 (1974).**

**34-1703. Form of petition.** — (1) The recall petition for state officers other than members of the state legislature shall be in substantially the following form:

### RECALL PETITION

To the Honorable . . . . , Secretary of State for the State of Idaho: We, the undersigned citizens and registered electors of the State of Idaho respectfully demand that . . . . , holding the office of . . . . , be recalled by the registered electors of this state for the following reasons (setting out the reasons for recall in no more than 200 words): that a special election therefor be called; that we, each for himself say: I am a registered elector of the State of Idaho; my residence, address including city, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date
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(Here follow no more than twenty numbered lines for signatures.) (2) The recall petition for members of the state legislature shall be in substantially the following form: RECALL PETITION

To the Honorable . . . . , Secretary of State for the State of Idaho: We, the undersigned citizens and registered electors of Legislative District No. . . . . , respectfully demand that . . . . , holding the office of . . . . , be recalled by the registered electors of Legislative District No. . . . . for the following reasons (setting out the reasons for recall in no more than 200 words): that a special election therefor be called; that we, each for himself say: I am a registered elector of Legislative District No. . . . . , my residence, address including city, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date
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(Here follow no more than twenty numbered lines for signatures.) (3) The recall petition for county officers shall be in substantially the following form: RECALL PETITION

To the Honorable . . . . , County Clerk for the County of . . . . : We, the undersigned citizens and registered electors of the County of . . . . , respectfully demand that . . . . , holding the office of . . . . , of the County of . . . . , be recalled by the registered electors of the County of . . . . for the following reasons (setting out the reasons for recall in no more than 200 words): that a special election therefor be called; that we, each for himself say: I am a registered elector of the County of . . . . , my residence, address including city, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date
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(Here follow no more than twenty numbered lines for signatures.) (4) The recall petition for city officers shall be in substantially the following form:

#### RECALL PETITION

To the Honorable . . . . , City Clerk for the City of . . . . :

We, the undersigned citizens and registered electors of the City of . . . . , respectfully demand that . . . . , holding the office of . . . . , of the City of . . . . , be recalled by the registered electors of the City of . . . . for the following reasons (setting out the reasons for recall in no more than 200 words): that a special election therefor be called; that we, each for himself say: I am a registered elector of the City of . . . . , my residence, address including city, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date
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(Here follow no more than twenty numbered lines for signatures.) (5) The recall petition for special district officers shall be in substantially the following form: RECALL PETITION

To the Honorable . . . . , County Clerk of the County of . . . . : We, the undersigned citizens and registered electors of (here insert the official name of the district), respectfully demand that .... , holding the office of .... , of the (district), be recalled by the registered electors of the (district) for the following reasons (insert the reasons for the recall in two hundred (200) words or less): that a special election therefor be called, that we, each for

himself say: I am a registered elector of the (district), my residence, address including city, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date
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(Here follow no more than twenty numbered lines for signatures.) History.

**I.C., § 34-1703**, as added by 1972, ch. 283, § 3, p. 703; am. 1989, ch. 344, § 1, p. 867; am. 1995, ch. 266, § 3, p. 848; am. 2013, ch. 135, § 5, p. 307; am. 2019, ch. 96, § 14, p. 344.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-1703 was repealed. See Prior Laws, § 34-1701.

### **Amendments.**

The 2013 amendment, by ch. 135, throughout the section, substituted “address including city” for “post office address” and “City” for “City or Post Office” in the petition templates.

The 2019 amendment, by ch. 96, inserted “no more than” following “(Here follow” in the centered paragraph at the end of each form.

### **Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

## **JUDICIAL DECISIONS**

**Cited in:** **West v. Cenarrusa, 95 Idaho 822, 520 P.2d 1088 (1974).**



**34-1704. Printing of petition and sheets for signatures — Time limits for perfecting petition.** — (1) Before or at the time of beginning to circulate any petition for the recall of any officer subject to recall, the person or persons, organization or organizations under whose authority the recall petition is to be circulated, shall send or deliver to the secretary of state, county clerk, or city clerk, as the case may be, a copy of a prospective petition duly signed by at least twenty (20) electors eligible to sign such petition. The receiving officer shall immediately examine the petition and specify the form and kind and size of paper on which the petition shall be printed and circulated for further signatures. All petitions and signature sheets for recall shall be printed on a good quality bond paper of standardized size in substantial conformance within the provisions of section 34-1703, Idaho Code. To every sheet of petitioners' signatures shall be attached a full and correct copy of the recall petition.

(2) The secretary of state, county clerk, or city clerk, as the case may be, shall indicate in writing on the prospective recall petition that he has approved it as to form and the date of such approval. Upon approval as to form, the secretary of state, county clerk, or city clerk, shall inform the person or persons, organization or organizations under whose authority the recall petition is to be circulated, in writing, that the petition must be perfected with the required number of signatures within seventy-five (75) days following the date of approval as to form. Signatures on the prospective petition shall not be counted toward the required number of signatures. Any petition that does not contain the required number of signatures within the seventy-five (75) days allowed shall be declared null and void ab initio in its entirety.

### **History.**

**I.C., § 34-1704**, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 2, p. 302; am. 2004, ch. 164, § 1, p. 533; am. 2013, ch. 135, § 6, p. 307.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-1704 was repealed. See Prior Laws, § 34-1701.

**Amendments.**

The 2013 amendment, by ch. 135, substituted “signatures” for “certified signatures” throughout the section; deleted “or ledger” following “good quality bond” in the third sentence of subsection (1); and substituted “does not contain the required number of” for “has not been perfected with the required number of” in the last sentence of subsection (2).

**Effective Dates.**

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

**JUDICIAL DECISIONS**

**Cited in:** [West v. Cenarrusa, 95 Idaho 822, 520 P.2d 1088 \(1974\).](#)

Idaho Code 34-1705

**34-1705. Verification on sheets for signatures.** — Each and every signature sheet of each petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of the petition, by his or her affidavit thereon, as a part thereof:

State of Idaho

State of Idaho

ss.

County of

I, ....., swear, under penalty of perjury, that I am a resident of the State of Idaho and at least eighteen (18) years of age; and that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence. I believe that each has stated his or her name and the accompanying required information on the signature sheet correctly, and that the person was eligible to sign this petition.

(Signature) .....

Post office address .....

.....

Subscribed and sworn to before me this .... day of ....., .....

(Notary Seal)

.....

Notary Public

Residing at .....

### History.

I.C., § 34-1705, as added by 1972, ch. 283, § 3, p. 703; am. 2004, ch. 164, § 2, p. 533.

## STATUTORY NOTES

### Prior Laws.

Former § 34-1705 was repealed. See Prior Laws, § 34-1701.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**34-1706. Examination and certification of signatures.** — All petitions with attached signature sheets shall be filed on the same day with the secretary of state, county clerk, or city clerk, as the case may be. The secretary of state or the city clerk shall promptly transmit the petitions and attached signature sheets to the county clerk. An examination to verify whether or not the petition signers are qualified electors shall be conducted by the county clerk and a certificate shall be attached to the signature sheets as provided in section 34-1807, Idaho Code. This examination shall not exceed fifteen (15) business days from the date of receipt of the petitions.

**History.**

I.C., § 34-1706, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 3, p. 302; am. 1995, ch. 266, § 4, p. 848; am. 2004, ch. 164, § 3, p. 533; am. 2013, ch. 135, § 7, p. 307.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-1706 was repealed. See Prior Laws, § 34-1701.

**Amendments.**

The 2013 amendment, by ch. 135, inserted “and a certificate shall be attached to the signature sheets” in the next-to-last sentence.

**Effective Dates.**

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

**JUDICIAL DECISIONS**

**Sufficiency of Petition.**

In action to require secretary of state to accept and file recall petition, the omission of the word “Pocatello” from the petition did not render it insufficient where each of the signers supplied his name, residence, county, legislative district, election precinct, and was a resident of the 34th legislative district when that district was composed entirely of precincts of the city of Pocatello. *West v. Cenarrusa*, 95 Idaho 822, 520 P.2d 1088 (1974).

**34-1707. Sufficiency of petition — Notification — Effect of resignation — Special election.** — (1) In the event that a petition filed with the secretary of state is found by the secretary of state to contain the required number of certified signatures, the secretary of state shall promptly provide written notice to the officer being recalled and the petitioner that the recall petition is in proper form. If the officer being recalled is the secretary of state, the governor shall also be notified.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the secretary of state, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the secretary of state, a special election shall be ordered by the secretary of state, unless he is the officer being recalled, in which event the governor shall order such special election. The special election must be held on the date prescribed in [section 34-106, Idaho Code](#). If the officer being recalled is one (1) specified in [section 34-1701\(1\) \(a\), Idaho Code](#), the special election shall be conducted statewide. If the officer being recalled is one (1) specified in [section 34-1701\(1\) \(b\), Idaho Code](#), the special election shall be conducted only in the legislative district.

(2) In the event that a petition filed with the county clerk is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly provide written notice to the officer being recalled and the petitioner that the recall petition is in proper form. If the officer being recalled is the county clerk, the secretary of state shall also be notified.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the county clerk, unless the county clerk is the officer being recalled, in which event the secretary of state shall order the special election. The special election must be held on the date prescribed in [section 34-106, Idaho Code](#). The special election shall be conducted countywide.

(3) In the event that a petition filed with the county clerk concerning the recall of an official of a local government office is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly provide written notice to the officer being recalled, the petitioner, and the governing board responsible for the local government official, if any, that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the county clerk. The special election must be held on the date prescribed in [section 34-106, Idaho Code](#). The election shall be conducted by the county clerk in the manner provided in [section 34-1401, Idaho Code](#).

(4) In the event that a petition is found not to have the required number of signatures, the officer shall continue in office and no new recall petition may be circulated for a period of ninety (90) days against the same officer.

### **History.**

[I.C., § 34-1707](#), as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 4, p. 302; am. 1989, ch. 344, § 2, p. 867; am. 1993, ch. 313, § 13, p. 1157; am. 1994, ch. 54, § 6, p. 93; am. 1995, ch. 266, § 5, p. 848; am. 2004, ch. 164, § 4, p. 533; am. 2012, ch. 211, § 9, p. 571; am. 2013, ch. 135, § 8, p. 307; am. 2020, ch. 81, § 1, p. 172.

### **STATUTORY NOTES**



## **Cross References.**

Secretary of state, § 67-901 et seq.

## **Prior Laws.**

Former § 34-1707 was repealed. See Prior Laws, § 34-1701.

## **Amendments.**

The 2012 amendment, by ch. 211, in paragraph (3)(b), in the last sentence, substituted “county clerk” for “special district” and deleted “and the special district may contract with the county clerk as provided in [section 34-1401, Idaho Code](#)” from the end; and, in paragraph (4)(b), in the last sentence, deleted “special” preceding “election” and inserted “by the county clerk in the manner provided in [section 34-1401, Idaho Code](#), and shall be conducted.”

The 2013 amendment, by ch. 135, substituted “provide written notice to the officer being recalled, and the petitioner informing them” for “by certified mail, inform the officer being recalled, and the petitioner” in the introductory paragraph of subsections (1), (2), (3), and (4) and substituted “provide written notice to the officer being recalled, and the petitioner, and the governing board of the special district informing them” for “by certified mail, inform the officer being recalled, and the petitioner, and the governing board and election officials of the special district” in the introductory paragraph in subsection (3).

The 2020 amendment, by ch. 81, in subsection (1), deleted “informing them” preceding “that the recall petition” near the end of the first sentence and added the last sentence; in subsection (2), in the introductory paragraph, deleted “informing them” preceding “that the recall petition” near the end of the first sentence and added the last sentence, and inserted “unless the county clerk is the officer being recalled, in which event the secretary of state shall order the special election” at the end of the first sentence in paragraph (b); in subsection (3), in the introductory paragraph, substituted “local government office” for “special district” near the beginning and substituted “the petitioner, and the governing board responsible for the local government official, if any” for “and the petitioner, and the governing board of the special district informing them” near the end, and substituted “county clerk” for “governing board of the special district” at the end of the first

sentence in paragraph (b); deleted former subsection (4), which ly read: “In the event that a petition filed with a city clerk is found by the city clerk to contain the required number of certified signatures, the city clerk shall promptly provide written notice to the officer being recalled, and the petitioner, informing them that the recall petition is in proper form. (a) If the officer being recalled resigns his office within five (5) business days after notice from the city clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law. (b) If the officer being recalled does not resign his office within five (5) business days after notice from the city clerk, a special election shall be ordered by the city clerk. The special election must be held on the date prescribed in [section 34-106, Idaho Code](#). The election shall be conducted by the county clerk in the manner provided in [section 34-1401, Idaho Code](#), and shall be conducted citywide”; and redesignated former subsection (5) as present subsection (4).

### **Effective Dates.**

Section 15 of S.L. 1993, ch. 313 provided that the act shall be in full force and effect on January 1, 1994.

Section 7 of S.L. 1994, ch. 54, provided that “an emergency existing therefor, which emergency is hereby declared to exist, Sections 4, 5 and 6 of this act shall be in full force and effect on and after March 3, 1994. Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 1994.”

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

Section 2 of S.L. 2020, ch. 81 declared an emergency. Approved March 10, 2020.

**34-1708. Form of recall ballot.** — The ballot at any recall election shall be headed “RECALL BALLOT” and on the ballot shall be printed in not more than two hundred (200) words the reason for demanding the recall of the officer named in the recall petition, and in not more than two hundred (200) words the officer’s justification of his course in office. Then the question of whether the officer should be recalled shall be placed on the ballot in a form substantially similar to the following:

- ☐ FOR recalling . . . . . who holds office of . . . .
- ☐ AGAINST recalling . . . . . who holds office of . . . .

**History.**

I.C., § 34-1708, as added by 1972, ch. 283, § 3, p. 703; am. 1989, ch. 344, § 3, p. 867.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1708 was repealed. See Prior Laws, § 34-1701.

**34-1709. Officer to continue in office.** — The officer named in the recall petition shall continue to perform the duties of his office until the results of the special recall election are officially declared.

**History.**

I.C., 34-1709, as added by 1972, ch. 283, § 3, p. 703.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1709 was repealed. See Prior Laws, § 34-1701.

**34-1710. Conduct of special recall election.** — Special elections for the recall of an officer shall be conducted and the results thereof canvassed and certified in all respects as general elections, except as otherwise provided. Nothing in this chapter shall preclude the holding of a recall election with another election.

**History.**

I.C., § 34-1710, as added by 1972, ch. 283, § 3, p. 703; am. 1989, ch. 344, § 4, p. 867; am. 1995, ch. 118, § 46, p. 848.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1710 was repealed. See Prior Laws, § 34-1701.

**34-1711. Canvass of returns.** — (1) The board of county commissioners shall act as the board of canvassers for all special recall elections that involve elections held wholly or partly within their county.

(a) For all special recall elections involving state officers, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and shall immediately transmit to the secretary of state an abstract of the votes cast.

(b) Within fifteen (15) days following the special recall election held to recall a state officer, the state board of canvassers shall meet and canvass the votes cast at such election, and the secretary of state shall immediately after the completion thereof, proclaim the results.

(c) For all special recall elections involving county officers, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and the county clerk shall immediately after the completion thereof, proclaim the results.

(d) For all special recall elections involving city or special district officials, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and the county clerk shall immediately after the completion thereof, proclaim the results. The county clerk shall certify the results of the recall election to the clerk of the political subdivision for which the election was held.

### **History.**

**I.C., § 34-1711**, as added by 1972, ch. 283, § 3, p. 703; am. 2004, ch. 164, § 5, p. 533; am. 2013, ch. 135, § 9, p. 307.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

State board of canvassers, § 34-1211.

### **Prior Laws.**

Former § 34-1711 was repealed. See Prior Laws, § 34-1701.

**Amendments.**

The 2013 amendment, by ch. 135, deleted “involving state and county officers” following “special recall elections” in the introductory paragraph in subsection (1); and, in paragraph (1)(d), substituted “or special district officials, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and the county clerk shall immediately after the completion thereof, proclaim the results” for “officers, the mayor and council shall meet within six (6) days after said election to canvass the votes cast at such election, and the city clerk shall immediately after the completion thereof, proclaim the results” in the first sentence and added the last sentence.

**Compiler’s Notes.**

As enacted in 1972, this section contains a subsection (1), but no subsection (2).

**Effective Dates.**

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

**34-1712. General election laws control.** — (1) The provisions relating to general elections, including the payment of expenses of conducting the recall election, shall govern special recall elections except where otherwise provided.

(2) Whenever a special recall election is ordered, notice must be issued in the same manner as for a general election.

(3) To recall any officer, a majority of the votes cast at the special recall election must be in favor of such recall, and additionally, the number of votes cast in favor of the recall must equal or exceed the votes cast at the last general election for that officer. If the officer was appointed or was not required to stand for election, then a majority of the votes cast in the recall election shall be the number necessary for recall.

(4) If recalled, an officer shall be recalled as of the time when the results of the special recall election are proclaimed, and a vacancy in the office shall exist.

(5) If an officer is recalled from his office the vacancy shall be filled in the manner provided by law for filling a vacancy in that office arising from any other cause.

### **History.**

**I.C., § 34-1712**, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 5, p. 302; am. 2003, ch. 57, § 2, p. 200; am. 2013, ch. 135, § 10, p. 307.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-1712 was repealed. See Prior Laws, § 34-1701.

### **Amendments.**

The 2013 amendment, by ch. 135, deleted “and posted” following “notice must be issued” in subsection (2).

### **Effective Dates.**



Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

**34-1713. Time within which recall may be filed — Removal of signatures.** — (1) No petition for a recall shall be circulated against any officer until he has actually held office under the current term for at least ninety (90) days.

(2) After one (1) special recall election, no further recall petition shall be filed against the same officer during his current term of office, unless the petitioners first pay into the public treasury which has paid such special recall election expenses the whole amount of the expenses for the preceding recall election. The specific reason for recall in one (1) recall petition for which an election has been held cannot be the basis for a second recall petition during that current term of office.

(3) The signer of any recall petition may remove his own name from the petition by crossing out, obliterating, or otherwise defacing his own signature at any time prior to the time when the petition is filed.

**History.**

I.C., § 34-1713, as added by 1972, ch. 283, § 3, p. 703; am. 1975, ch. 137, § 6, p. 302; am. 2004, ch. 164, § 6, p. 533; am. 2013, ch. 135, § 11, p. 307.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1713 was repealed. See Prior Laws, § 34-1701.

**Amendments.**

The 2013 amendment, by ch. 135, substituted “office under the current term for at least” for “his office” in subsection (1) and inserted “for which an election has been held” in the last sentence of subsection (2).

**Effective Dates.**

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

**34-1714. Prohibited acts — Penalties.** — (1) A person is guilty of a felony, who:

(a) Signs any name other than his own to any recall petition; (b) Knowingly signs his name more than once on the same recall petition; (c) Knowingly signs his name to any recall petition for the recall of any state, county or city officer if he is not a registered elector; (d) Wilfully or knowingly circulates, publishes or exhibits any false statement or representation concerning the contents, purport or effect of any recall petition for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such recall petition; (e) Presents to any officer for filing any recall petition to which is attached, appended or subscribed any signature which the person so filing such petition knows to be false or fraudulent, or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto; (f) Circulates or causes to circulate any recall petition, knowing the same to contain false, forged or fictitious names; (g) Makes any false affidavit concerning any recall petition or the signatures appended thereto; (h) Offers, proposes or threatens for any pecuniary reward or consideration: (i) To offer, propose, threaten or attempt to sell, hinder or delay any recall petition or any part thereof or any signatures thereon; (ii) To offer, propose or threaten to desist from beginning, promoting or circulating any recall petition; (iii) To offer, propose, attempt or threaten in any manner or form to use any recall petition or any power of promotion or opposition in any manner or form for extortion, blackmail or secret or private intimidation of any person or business interest.

(2) A public officer is guilty of a felony, who:

(a) Knowingly makes any false return, certification or affidavit concerning any recall petition, or the signatures appended thereto.

**History.**

I.C., § 34-1714, as added by 1972, ch. 283, § 3, p. 703; am. 1972, ch. 382, § 1, p. 1114.

## **STATUTORY NOTES**

### **Cross References.**

Penalty for felony when not otherwise provided, § 18-112.

### **Prior Laws.**

Former § 34-1714 was repealed. See Prior Laws, § 34-1701.

### **Compiler's Notes.**

As enacted in 1972, subsection (2) of this section contains a paragraph (a), but no paragraph (b).

**34-1715. Refusal to accept petition — Mandate — Injunction.** — If the secretary of state, county clerk, or city clerk, refuses to accept and file any petition for the recall of a public officer with the requisite number of eligible signatures, any citizen may apply within ten (10) business days after such refusal to the district court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state, county clerk, or city clerk shall then accept and file the recall petition, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office, except that the time limitations required by section 34-1704(2), Idaho Code, shall begin to run only as of the date of the court judgment, which shall be so stated in the judgment. On a showing that the petition is not legally sufficient, the court may enjoin the secretary of state, county clerk, or city clerk, and all other officers from certifying or printing any official ballot for a recall election. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the court of appeals within ten (10) business days after a decision is rendered. The district court of the state of Idaho in and for Ada County shall have jurisdiction in all cases involving the recall of state officers.

**History.**

I.C., § 34-1715, as added by 1972, ch. 283, § 3, p. 703; am. 2004, ch. 164, § 7, p. 533.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1715 was repealed. See Prior Laws, § 34-1701.

**34-1716 — 34-1727. Filling of vacancies — Petitions — Unlawful practices — Penalty. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1933, ch. 209, §§ 16 to 27, were repealed by S.L. 1972, ch. 283, § 1.



## **CHAPTER 18**

### **INITIATIVE AND REFERENDUM ELECTIONS**

#### **Section.**

34-1801. Statement of legislative intent and legislative purpose.

34-1801A. Petition.

34-1801B. Initiative and referendum procedures for cities.

34-1801C. Initiative and referendum procedures for counties.

34-1802. Initiative petitions — Time for gathering signatures — Time for submission of signatures to the county clerk — Time for filing.

34-1803. Referendum petitions — Time for filing — When election held — Effective date of law.

34-1803A. [Reserved.]

34-1803B. Initiative and referendum petitions — Removal of signatures.

34-1804. Initial filing of ballot measure — Printing of petition and signature sheets — Proposed funding and fiscal information.

34-1805. Sponsors to print petition — Number of signers required.

34-1806. Binding of petition and signature sheets — Approved measures to be printed with session laws.

34-1807. Circulation of petitions — Verification of petition and signature sheets — Comparison of signatures with registration oaths and records — Certain petitions and signatures void.

34-1808. Filing of petition — Mandate — Injunction.

34-1809. Review of initiative and referendum measures by attorney general — Certificate of review prerequisite to assignment of ballot title — Ballot title — Judicial review.

34-1810. Printing and designation of ballot titles on official ballots.

34-1811. Manner of voting — Procedure when conflicting measures approved.



34-1812. Fiscal impact statements.

34-1812A. Arguments concerning initiative and referendum measures.

34-1812B. Submission of rebuttal arguments.

34-1812C. Voters' pamphlet.

34-1813. Counting, canvassing and return of votes — Effective dates.

34-1814. Who may sign petition — Effect of wrongful signing — Penalty for wrongful signing.

34-1814A. Petition circulators receiving compensation and volunteers.  
[Repealed.]

34-1815. False statements spoken or written concerning petition unlawful — Failure to disclose material provisions.

34-1816. Filing petition with false signatures unlawful.

34-1817. Circulating petition with false, forged or fictitious names unlawful.

34-1818. False affidavit by any person unlawful.

34-1819. False return, certification or affidavit by public official unlawful.

34-1820. Signing more than once or when not qualified unlawful.

34-1821. Felonious acts enumerated.

34-1822. Penalty for violations.

34-1823. Severability.

**34-1801. Statement of legislative intent and legislative purpose. —**

The legislature of the state of Idaho finds that there have been incidents of fraudulent and misleading practices in soliciting and obtaining signatures on initiative or referendum petitions, or both, that false signatures have been placed upon initiative or referendum petitions, or both, that difficulties have arisen in determining the identity of petition circulators and that substantial danger exists that such unlawful practices will or may continue in the future. In order to prevent and deter such behavior, the legislature determines that it is necessary to provide easy identity to the public of those persons who solicit or obtain signatures on initiative or referendum petitions, or both, and of those persons for whom they are soliciting and obtaining signatures and to inform the public concerning the solicitation and obtaining of such signatures. It is the purpose of the legislature in enacting this act to fulfill the foregoing statement of intent and remedy the foregoing practices.

**History.**

I.C., § 34-1801, as added by 1997, ch. 266, § 2, p. 756.

**STATUTORY NOTES**

**Compiler's Notes.**

Former § 34-1801 was amended and redesignated as § 34-1801A by § 1 of S.L. 1997, ch. 266, effective July 1, 1997.

The term “this act”, used in the last sentence, refers to S.L. 1997, Chapter 266, which is codified as §§ 34-1801, 34-1801A, 34-1802, 34-1803B, 34-1805, 34-1807, 34-1809, 34-1814, 34-1815, and 34-1823. The reference probably should be to “this chapter,” being chapter 18, title 34, Idaho Code.

**Effective Dates.**

Section 12 of S.L. 1997, ch. 266 read: “This act shall be in full force and effect on and after July 1, 1997, and this act shall apply to all initiative petitions that have been submitted with qualifying signatures pursuant to [section 34-1804, Idaho Code](#), on and after July 1, 1997.”

**34-1801A. Petition.** — (1) An initiative petition shall embrace only one (1) subject and matters properly connected with it.

(2) The following shall be substantially the form of petition for any law proposed by the initiative: WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

### INITIATIVE PETITION

To the Honorable ...., Secretary of State of the State of Idaho: We, the undersigned citizens and qualified electors of the State of Idaho, respectfully demand that the following proposed law (setting out full text of measure proposed) shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular general election, to be held on the .... day of ...., A.D., ...., and each for himself says: I have personally signed this petition; I am a qualified elector of the State of Idaho; my residence and legislative district are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City	Date	Legislative District Official Use Only
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(Here follow no more than twenty numbered lines for signatures.) (3) The petition for referendum on any act passed by the state legislature of the state of Idaho shall be in substantially the same form with appropriate title and changes, setting out in full the text of the act of the legislature to be referred to the people for their approval or rejection.

### History.

1933, ch. 210, § 1, p. 431; am. 1988, ch. 48, § 1, p. 66; am. and redesign. 1997, ch. 266, § 1, p. 756; am. 2013, ch. 214, § 1, p. 503; am. 2013, ch. 336, § 1, p. 873; am. 2019, ch. 96, § 15, p. 344; am. 2020, ch. 336, § 1, p. 977.

## STATUTORY NOTES

### **Cross References.**

Constitutional authorization, Idaho [Const., Art. III, § 1.](#)

### **Amendments.**

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 214, in the Initiative Petition, substituted “legislative district” for “post office” near the end of the introductory language, deleted “or Post Office” following “City” in the column heading, and added the last two column headings.

The 2013 amendment, by ch. 336, in the Initiative Petition table head, substituted “Date” for “Legislative District” in the fifth column, and “Legislative District Official use only” in the sixth column.

The 2019 amendment, by ch. 96, inserted “no more than” following “(Here follow” in the centered paragraph at the end of the form.

The 2020 amendment, by ch. 336, added present subsection (1) and designated the existing paragraphs as subsections (2) and (3).

### **Compiler’s Notes.**

This section was formerly compiled as § 34-1801.

The words enclosed in parentheses so appeared in the law as enacted.

Section 5 of S.L. 2020, ch. 336 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 4 of S.L. 2013, ch. 336 provided: “This act shall be in full force and effect on and after July 1, 2013, and shall apply to those initiative or referendum petitions that have been assigned a ballot title by the Attorney General on and after July 1, 2013, and those initiative or referendum petitions filed prior to July 1, 2013, shall have the provisions of Chapter 18,

Title 34, Idaho Code, that were in existence prior to July 1, 2013, apply to them.”

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

## **JUDICIAL DECISIONS**

### **Analysis**

**Legal voter.**

**Repeal by legislature.**

**Legal Voter.**

One who is not registered to vote is not a “legal voter” (now “qualified elector”) within the meaning of this section. *Dredge Mining Control — Yes! , Inc. v. Cenarrusa*, 92 Idaho 480, 445 P.2d 655 (1968).

**Repeal by Legislature.**

The legislature had the constitutional power to repeal the Senior Citizens’ Grants Act initiated by the people and approved and passed by a vote of the people at a general election. *Luker v. Curtis*, 64 Idaho 703, 136 P.2d 978 (1943).

**Cited in:** *In re Idaho State Fed’n of Labor*, 75 Idaho 367, 272 P.2d 707 (1954).

**34-1801B. Initiative and referendum procedures for cities.** — Each city shall allow direct legislation by the people through the initiative and referendum. Cities shall follow the procedures set forth in this chapter subject to the following provisions:

- (1) The city attorney shall perform the duties assigned to the attorney general.
- (2) The city clerk shall perform those duties assigned to the secretary of state.
- (3) City initiative and referendum elections shall be held on the Tuesday following the first Monday in November in odd-numbered years.
- (4) An action brought pursuant to [section 34-1809, Idaho Code](#), challenging the ballot title or short title shall be brought in the district court in the county in which the city is located.
- (5) Pursuant to [section 34-1809, Idaho Code](#), the city attorney shall prepare recommendations concerning revision of the initiative or referendum, issue a certificate of review to the city clerk, and shall prepare the ballot title and short title.
- (6) To be eligible to sign a petition for city initiative or referendum, a person shall be a qualified elector of the city at the time of signing thereon.
- (7) To perfect a petition for city initiative or referendum the petition shall have signatures from at least twenty percent (20%) of the total number of qualified electors voting in the last general city election in November of an odd-numbered year.
- (8) The provisions of [section 34-1805, Idaho Code](#), relating to the number of required signatures and geographic distribution of signatures shall not apply to city initiative or referendum.
- (9) Any person who circulates a petition for city initiative or referendum shall be a resident of the state of Idaho and at least eighteen (18) years of age, and pursuant to [section 34-1807, Idaho Code](#), shall certify their belief that each signer of the petition is a qualified elector of the state of Idaho and the city.

(10) A copy of all petitions and signature sheets shall be kept by the city clerk as a public record.

(11) The prospective petition for referendum, as provided by [section 34-1804, Idaho Code](#), shall be filed not more than sixty (60) days following publication of the adopted ordinance as provided by [section 50-901, Idaho Code](#).

(12) The deadline for submission of signatures to the city clerk is one hundred eighty (180) days after the petitioners for initiative or referendum receive the official ballot title from the city clerk, or April 30 of the year of the initiative or referendum election, whichever is earlier.

(13) Petitioners must submit the signed initiative or referendum petitions to the county clerk for verification not later than the close of business on the first day of May in the year of the initiative or referendum election, or one hundred eighty (180) days after the petitioners receive the official ballot title from the city clerk, whichever is earlier.

(14) The county clerk has sixty (60) calendar days to verify the signatures as provided in subsection (3) of [section 34-1802, Idaho Code](#).

(15) The city council shall have the option to adopt the ordinance proposed by initiative within thirty (30) days after the notification pursuant to [section 34-1807, Idaho Code](#), provided that the petition has the required number of signatures. The city council shall hold a public hearing on the proposed ordinance within the thirty (30) day period, preceded by legal notice published once in the official city newspaper at least seven (7) days preceding the hearing. If the ordinance is not adopted by the council by the end of the thirty (30) day period, the initiative shall be put on the ballot.

(16) As provided by [sections 34-1812A through 34-1812C, Idaho Code](#), a voters' pamphlet shall be prepared by the city clerk.

(17) To be passed into law, an initiative or referendum shall be approved by a majority of the votes cast on the measure.

(18) The mayor shall issue the proclamation provided by [section 34-1813, Idaho Code](#).

(19) The city clerk shall publish an ordinance adopted by initiative or referendum within thirty (30) days after the proclamation by the mayor

provided in subsection (18) of this section.

(20) All city ordinances setting forth procedures for initiative or referendum are void on July 1, 2015.

(21) This section does not apply to bond elections.

(22) This section does not apply to any local zoning legislation including, but not limited to, ordinances required or authorized pursuant to chapter 65, title 67, Idaho Code.

### **History.**

**I.C., § 34-1801B**, as added by 2015, ch. 285, § 2, p. 1155; am. 2018, ch. 238, § 2, p. 557.

## **STATUTORY NOTES**

### **Amendments.**

The 2018 amendment, by ch. 238, added subsection (22).

## **JUDICIAL DECISIONS**

### **Decisions Under Prior Law**

#### **Analysis**

**Court remedies against council.**

**Initiative power.**

**Necessity for authorizing ordinance.**

**Tax and appropriation ordinances.**

### **Court Remedies Against Council.**

Council could have been compelled in a proper case by mandamus to hold a referendum election and could have been restrained by writ of prohibition from holding an unauthorized election. **Perrault v. Robinson**, 29 Idaho 267, 158 P. 1074 (1916). See **City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)**, 143 Idaho 254, 141 P.3d 1123 (2006).

### **Initiative Power.**



Pursuant to Idaho Const., Art. III, § 1 and § 50-501, coalition's petition for an initiative election demanding enactment of an ordinance for a Ten Commandments display to be placed in a park qualified for the ballot for consideration by the voters; the supreme court could not interrupt the consideration of a properly qualified initiative. *City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)*, 143 Idaho 254, 141 P.3d 1123 (2006).

### **Necessity for Authorizing Ordinance.**

Boise City not having passed an initiative and referendum ordinance as provided by provisions of the former law governing referendums, no such right of direct legislation by the people existed, the provisions for the same under the Boise City charter being no longer in force. *Anderson v. Boise City*, 91 Idaho 527, 427 P.2d 574 (1967).

### **Tax and Appropriation Ordinances.**

It was not intention of legislature that ordinances making annual tax levy and appropriations should have been submitted to a referendum vote. *Swain v. Fritchman*, 21 Idaho 783, 125 P. 319 (1912).

**34-1801C. Initiative and referendum procedures for counties. —**

Each county shall allow direct legislation by the people through the initiative and referendum. Counties shall follow the procedures set forth in this chapter subject to the following provisions:

(1) The county prosecuting attorney shall perform the duties assigned to the attorney general.

(2) The county clerk shall perform those duties assigned to the secretary of state.

(3) County initiative and referendum elections shall be held pursuant to [section 34-106\(8\), Idaho Code](#).

(4) Pursuant to [section 34-1809, Idaho Code](#), the county prosecuting attorney shall prepare recommendations concerning revision of the initiative or referendum, issue a certificate of review to the county clerk and prepare the ballot title and short title.

(5) An action brought pursuant to [section 34-1809, Idaho Code](#), challenging the ballot title or short title shall be brought in the district court of the county.

(6) To be eligible to sign a petition for county initiative or referendum, a person shall be a qualified elector of the county at the time of signing the petition.

(7) To perfect a petition for county initiative or referendum, the petition shall have signatures from at least twenty percent (20%) of the total number of qualified electors voting in the last general county election in November of an even-numbered year.

(8) The provisions of [section 34-1805, Idaho Code](#), relating to the number of required signatures and geographic distribution of signatures shall not apply to a county initiative or referendum.

(9) Any person who circulates a petition for county initiative or referendum shall be a resident of the state of Idaho and at least eighteen (18) years of age, and pursuant to [section 34-1807, Idaho Code](#), shall certify

his belief that each signer of the petition is a qualified elector of the state of Idaho and the county.

(10) A copy of all petitions and signature sheets shall be kept by the county clerk as a public record.

(11) The prospective petition for referendum, as provided by [section 34-1804, Idaho Code](#), shall be filed no more than sixty (60) days following publication of the adopted ordinance as provided by [section 31-715, Idaho Code](#).

(12) Petitioners must submit the signed initiative or referendum petitions to the county clerk for verification no later than one hundred eighty (180) days after the petitioners receive the official ballot title from the county clerk, or one hundred eighty (180) days before the election at which the initiative or referendum is to be voted on, whichever is earlier.

(13) The county clerk has sixty (60) calendar days to verify the signatures as provided in [section 34-1802\(3\), Idaho Code](#).

(14) The board of county commissioners shall have the option to adopt the ordinance proposed by initiative within thirty (30) days after the notification pursuant to [section 34-1807, Idaho Code](#), provided that the petition has the required number of signatures. The board of county commissioners shall hold a public hearing on the proposed ordinance within the thirty (30) day period, preceded by legal notice published once in the county at least seven (7) days preceding the hearing. If the ordinance is not adopted by the board of county commissioners by the end of the thirty (30) day period, the initiative shall be put on the ballot.

(15) As provided by [sections 34-1812A through 34-1812C, Idaho Code](#), a voters' pamphlet shall be prepared by the county clerk.

(16) To be passed into law, an initiative or referendum shall be approved by a majority of the votes cast on the measure.

(17) The board of county commissioners shall issue the proclamation provided by [section 34-1813, Idaho Code](#).

(18) The county clerk shall publish an ordinance adopted by initiative or referendum within thirty (30) days after the proclamation by the board of county commissioners provided in subsection (17) of this section.

(19) All county ordinances setting forth initiative or referendum procedures are void on July 1, 2018.

(20) This section does not apply to bond elections.

(21) This section does not apply to zoning legislation including, but not limited to, ordinances required or authorized pursuant to chapter 65, title 67, Idaho Code.

**History.**

I.C., § 34-1801C, as added by 2018, ch. 238, § 4, p. 557.

**STATUTORY NOTES**

**Compiler's Notes.**

This section is similar to former § 31-717, as last amended by S.L. 1996, ch. 283, § 9 and repealed by S.L. 2018, ch. 238, § 3, effective July 1, 2018.

**34-1802. Initiative petitions — Time for gathering signatures — Time for submission of signatures to the county clerk — Time for filing.**

— (1) Except as provided in section 34-1804, Idaho Code, petitions for an initiative shall be circulated and signatures obtained beginning upon the date that the petitioners receive both the fiscal impact statement and the official ballot title from the secretary of state and extending eighteen (18) months from that date, or April 30 of the year of the next general election, whichever occurs earlier. The last day for circulating petitions and obtaining signatures shall be the last day of April in the year an election on the initiative will be held.

(2) The person or persons or organization or organizations under whose authority the measure is to be initiated shall submit the petitions containing signatures to the county clerk for verification pursuant to the provisions of [section 34-1807, Idaho Code](#). The signatures required shall be submitted to the county clerk not later than the close of business on the first day of May in the year an election on the initiative will be held, or eighteen (18) months from the date the petitioner receives the official ballot title from the secretary of state, whichever is earlier.

(3) The county clerk shall, within sixty (60) calendar days of the deadline for the submission of the signatures, verify the signatures contained in the petitions, but in no event shall the time extend beyond the last day of June in the year an election on the initiative will be held.

(4) Initiative petitions with the requisite number of signatures attached shall be filed with the secretary of state not less than four (4) months before the election at which they are to be voted upon.

**History.**

1933, ch. 210, § 2, p. 431; am. 1997, ch. 266, § 3, p. 756; am. 2011, ch. 285, § 14, p. 778; am. 2020, ch. 317, § 1, p. 902.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2011 amendment, by ch. 285, substituted “of the year of the next general election” for “of the year that an election on the initiative will be held” at the end of the first sentence.

The 2020 amendment, by ch. 317, inserted “both the fiscal impact statement and” near the middle of the first sentence in subsection (1).

**Compiler’s Notes.**

Section 5 of S.L. 2020, ch. 317 provided: “Severability. The provisions of this act are hereby declared to be severable, and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

**34-1803. Referendum petitions — Time for filing — When election held — Effective date of law.** — Referendum petitions with the requisite number of signatures attached shall be filed with the secretary of state not more than sixty (60) days after the final adjournment of the session of the state legislature which passed on the bill on which the referendum is demanded. All elections on measures referred to the people of the state shall be had at the biennial regular election. Any measure so referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon, and not otherwise.

**History.**

1933, ch. 210, § 3, p. 431.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**JUDICIAL DECISIONS**

Analysis

Bill containing emergency clause.

Constitutional authority.

**Bill Containing Emergency Clause.**

The legislature of this state is authorized by Idaho **Const., Art. III, § 22**, to declare an emergency and thereby render an act effective immediately upon its passage; the people of this state are statutorily authorized by this section to approve or reject that legislation at the next biennial election. Hence, H.B. 2 (S.L. 1985, ch. 2; §§ 44-2001 to 44-2011), designated as an emergency bill by the legislature, was effective immediately and would continue to be effective until the next biennial election, and, thereafter, only if approved by the voters. **Idaho State AFL-CIO v. Leroy**, 110 Idaho 691, 718 P.2d 1129 (1986).

### **Constitutional Authority.**

The right to veto by referendum any act of the legislature under the provisions of Idaho Const., Art. III, § 1 is limited by the filing requirements of this section. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

### **RESEARCH REFERENCES**

**Idaho Law Review.** — Legislative Power at Odds: The Effect of a Referendum Petition in Idaho, Comment. 48 Idaho L. Rev. 553 (2012).



### **34-1803A. [Reserved.]**

**34-1803B. Initiative and referendum petitions — Removal of signatures.** — (1) The signer of any initiative or referendum petition may remove his or her own name from the petition by crossing out, obliterating or otherwise defacing his or her own signature at any time prior to the time when the petition is presented to the county clerk for signature verification.

(2) The signer of any initiative or referendum petition may have his or her name removed from the petition at any time after presentation of the petition to the county clerk but prior to verification of the signature, by presenting in writing or submitting electronically to the county clerk a signed statement that the signer desires to have his name removed from the petition. The statement shall contain sufficient information to clearly identify the signer. The county clerk shall immediately strike the signer's name from the petition, and adjust the total of certified signatures on the petition accordingly. The statement shall be attached to, and become a part of the initiative or referendum petition.

(3) Each signature page of an initiative or referendum petition shall state that any person signing a petition may remove his signature pursuant to this section.

#### **History.**

**I.C., § 34-1803B**, as added by 1997, ch. 266, § 4, p. 756; am. 2020, ch. 336, § 2, p. 977.

## **STATUTORY NOTES**

#### **Amendments.**

The 2020 amendment, by ch. 336, substituted “presenting in writing or submitting electronically” for “presenting or submitting” near the middle of the first sentence in subsection (1) and added subsection (3).

#### **Compiler's Notes.**

Section 5 of S.L. 2020, ch. 336 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**34-1804. Initial filing of ballot measure — Printing of petition and signature sheets — Proposed funding and fiscal information. —** (1) Before or at the time of beginning to circulate any petition for the referendum to the people on any act passed by the state legislature of the state of Idaho, or for any law proposed by the initiative, the person or persons or organization or organizations under whose authority the measure is to be referred or initiated shall send or deliver to the secretary of state a copy of such petition duly signed by at least twenty (20) qualified electors of the state, which shall be filed by said officer in his office, and who shall immediately transmit a copy of the petition to the attorney general for the issuance of the certificate of review as provided in section 34-1809, Idaho Code.

(2) In the case of an initiative petition, the person or persons or organization or organizations under whose authority the measure is to be initiated shall propose a funding source for the cost of implementing the measure. The proposed funding source information shall accompany a copy of the initiative when the petition is initially filed with the secretary of state under subsection (1) of this section, and whenever the petition is circulated for signatures, but the proposed funding source information shall not formally be part of the initiative and shall have no binding effect. Upon receipt of the petition and the proposed funding source information, the secretary of state shall immediately transmit a copy of the petition and proposed funding source information to the division of financial management so that it may issue a statement of fiscal impact as provided in [section 34-1812, Idaho Code](#). The provisions of this subsection shall not apply to a city or county ballot initiative.

(3) All petitions for the initiative and for the referendum and sheets for signatures shall be printed on a good quality of bond or ledger paper in the form and manner as approved by the secretary of state. To every sheet of petitioners' signatures shall be attached a full and correct copy of the measure so proposed by initiative petition and a copy of the fiscal impact statement summary for the initiative, if applicable; but such petition may be filed by the secretary of state in numbered sections for convenience in handling. Every sheet of petitioners' signatures upon referendum petitions

shall be attached to a full and correct copy of the measure on which the referendum is demanded and may be filed in numbered sections in like manner as initiative petitions. Not more than twenty (20) signatures on one (1) sheet shall be counted. Each signature sheet shall contain signatures of qualified electors from only one (1) county.

**History.**

1933, ch. 210, § 4, p. 431; am. 1988, ch. 48, § 2, p. 66; am. 2013, ch. 214, § 2, p. 503; am. 2013, ch. 336, § 2, p. 873; am. 2020, ch. 317, § 2, p. 902.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

Secretary of state, § 67-901 et seq.

**Amendments.**

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 214, added “and legislative district” at the end of the last sentence.

The 2013 amendment, by ch. 336, deleted “and legislative district” at the end of the last sentence.

The 2020 amendment, by ch. 317, rewrote the section heading, which formerly read: “Printing of petition and signature sheets”; added the subsection designators to the existing text; added present subsection (2); and inserted “and a copy of the fiscal impact statement summary for the initiative, if applicable” in the second sentence in subsection (3).

**Compiler’s Notes.**

Section 5 of S.L. 2020, ch. 317 provided: “Severability. The provisions of this act are hereby declared to be severable, and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**Effective Dates.**

Section 4 of S.L. 2013, ch. 336 provided: “This act shall be in full force and effect on and after July 1, 2013, and shall apply to those initiative or referendum petitions that have been assigned a ballot title by the Attorney General on and after July 1, 2013, and those initiative or referendum petitions filed prior to July 1, 2013, shall have the provisions of Chapter 18, Title 34, Idaho Code, that were in existence prior to July 1, 2013, apply to them.”

**34-1805. Sponsors to print petition — Number of signers required.**

— After the form of the initiative or referendum petition has been approved by the secretary of state as in sections 34-1801A through 34-1822, Idaho Code, provided, the same shall be printed by the person or persons or organization or organizations under whose authority the measure is to be referred or initiated and circulated in the several counties of the state for the signatures of legal voters. Before such petitions shall be entitled to final filing and consideration by the secretary of state there shall be affixed thereto the signatures of legal voters equal in number to not less than six percent (6%) of the qualified electors at the time of the last general election in each of at least eighteen (18) legislative districts; provided however, the total number of signatures shall be equal to or greater than six percent (6%) of the qualified electors of the state at the time of the last general election.

**History.**

1933, ch. 210, § 5, p. 431; am. 1997, ch. 266, § 5, p. 756; am. 2007, ch. 202, § 7, p. 620; am. 2013, ch. 214, § 3, p. 503.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2007 amendment, by ch. 202, deleted the former last sentence, which read: “Provided, that the petition must contain a number of signatures of qualified electors from each of twenty-two (22) counties equal to not less than six percent (6%) of the qualified electors at the time of the last general election in each of those twenty-two (22) counties.”

The 2013 amendment, by ch. 214, inserted “at the time of the last general election in each of at least eighteen (18) legislative districts; provided however, the total number of signatures shall be equal to or greater than six percent (6%) of the qualified electors” in the last sentence.

## JUDICIAL DECISIONS

### Analysis

Constitutionality.

“Legal voters” construed.

**Constitutionality.**

Because it violated the **Equal Protection Clause** by giving rural voters preferential treatment, the following language of § 34-1805 was struck: “Provided, that the petition must contain a number of signatures of qualified electors from each of twenty-two (22) counties equal to not less than six percent (6%) of the qualified electors at the time of the last general election in each of those twenty-two (22) counties.” **Idaho Coalition United for Bears v. Cenarrusa**, 234 F. Supp. 2d 1159 (D. Idaho 2001) (see 2007 amendment).

Former § 34-1805 violated the **Equal Protection Clause** because the few voters in a sparsely populated county had a power equal to the vastly larger number of voters who resided in a populous county, and an electoral system could not be based on treating unequal counties equally and making the electoral determination dependent on the support of numbers of counties rather than numbers of people, but to the extent that Idaho wished to create a check on the will of the majority by a nondiscriminatory means, the **Equal Protection Clause** was no bar; thus, the court affirmed the trial court’s grant of summary judgment in favor of advocacy groups that challenged the statute. **Idaho Coalition United for Bears v. Cenarrusa**, 342 F.3d 1073 (9th Cir. 2003) (see 2007 amendment).

**“Legal Voters” Construed.**

“Legal voters” [now qualified electors] within the meaning of this section must, in addition to the eligibility requirements, be registered to vote at the time they sign the initiative petition. **Dredge Mining Control — Yes! , Inc. v. Cenarrusa**, 92 Idaho 480, 445 P.2d 655 (1968).

## RESEARCH REFERENCES

**Idaho Law Review.** — Legislative Power at Odds: The Effect of a Referendum Petition in Idaho, Comment. 48 Idaho L. Rev. 553 (2012).

Idaho's Messy History with Term Limits: A Modest Response, Bart M. Davis. 52 Idaho L. Rev. 463 (2016).



**34-1806. Binding of petition and signature sheets — Approved measures to be printed with session laws.** — When any such initiative or referendum petition shall be offered for filing the secretary of state shall detach the sheets containing the signatures and affidavits and cause them all to be attached to one or more printed copies of the measure so proposed by initiative or referendum petitions. The secretary of state shall file and keep such petitions as official public records. The secretary of state shall cause every such measure so approved by the people to be printed with the general laws enacted by the next ensuing session of the state legislature with the date of the governor's proclamation declaring the same to have been approved by the people.

**History.**

1933, ch. 210, § 6, p. 431; am. 1988, ch. 48, § 3, p. 66.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**34-1807. Circulation of petitions — Verification of petition and signature sheets — Comparison of signatures with registration oaths and records — Certain petitions and signatures void.** — Any person who circulates any petition for an initiative or referendum shall be a resident of the state of Idaho and at least eighteen (18) years of age. Each and every sheet of every such petition containing signatures shall be verified on the face thereof in substantially the following form, by the person who circulated said sheet of said petition, by his or her affidavit thereon, and as a part thereof:

State of Idaho                    )  
  ) ss.  
County of ....                 )

I,...., being first duly sworn, say: That I am a resident of the State of Idaho and at least eighteen (18) years of age: that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence: I believe that each has stated his or her name, address and residence correctly, that each signer is a qualified elector of the State of Idaho, and a resident of the county of ....

Signed .....  
Post-office address .....  
Subscribed and sworn to before me this .... day of ....  
(Notary Seal)                   Notary Public .....  
                                     Residing at .....

In addition to said affidavit the county clerk shall carefully examine said petitions and shall attach to the signature sheets a certificate to the secretary

State of Idaho                    )  
  ) ss.  
of state substantially as follows: County of ....                 )

To the honorable ...., Secretary of State for the State of Idaho: I, ...., County Clerk of .... County, hereby certify that .... signatures on this petition are those of qualified electors in legislative district number ....

Signed .....  
County Clerk or Deputy.  
(Seal of office)

The county clerk shall deliver the petition or any part thereof to the person from whom he received it with his certificate attached thereto as above provided. The forms herein given are not mandatory and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical error.

Any petition upon which signatures are obtained by a person not a resident of the state of Idaho and at least eighteen (18) years of age, shall be void. The definition of resident in [section 34-107, Idaho Code](#), shall apply to the circulators of initiative and referendum petitions. In addition to being a resident, a petition circulator shall be at least eighteen (18) years of age.

### **History.**

1933, ch. 210, § 7, p. 431; am. 1988, ch. 48, § 4, p. 66; am. 1997, ch. 266, § 6, p. 756; am. 1999, ch. 47, § 1, p. 109; am. 2013, ch. 214, § 4, p. 503; am. 2013, ch. 336, § 3, p. 873.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Amendments.**

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 214, in the affidavit form found in the first paragraph, substituted “legislative district” for “post office address” and inserted “legislative district number .... in”; and, in the affidavit form found in the second paragraph, inserted “in legislative district number .....”

The 2013 amendment, by ch. 336, in the first affidavit form, substituted “address” for “legislative district” and deleted “legislative district number . . . in” following “and a resident of.”

### **Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 3 of S.L. 1999, ch. 47 declared an emergency. Approved March 8, 1999.

Section 4 of S.L. 2013, ch. 336 provided: “This act shall be in full force and effect on and after July 1, 2013, and shall apply to those initiative or referendum petitions that have been assigned a ballot title by the Attorney General on and after July 1, 2013, and those initiative or referendum petitions filed prior to July 1, 2013, shall have the provisions of Chapter 18, Title 34, Idaho Code, that were in existence prior to July 1, 2013, apply to them.”

## JUDICIAL DECISIONS

### Analysis

**Constitutionality.**

**Legal voter.**

**Constitutionality.**

Because the residency requirement of § 34-1807 was reasonably related to the state’s interest in preventing fraud and ensuring that any circulator who commits fraud would be subject to the state’s subpoena power, it was upheld as constitutional. *Idaho Coalition United for Bears v. Cenarrusa*, 234 F. Supp. 2d 1159 (D. Idaho 2001).

**Legal Voter.**

“Legal voter” [now “qualified elector”] within the meaning of this section is one who, in addition to all other eligibility requirements, is registered to vote at the time of signing the initiative petition. *Dredge Mining Control — Yes!, Inc. v. Cenarrusa*, 92 Idaho 480, 445 P.2d 655 (1968).

**34-1808. Filing of petition — Mandate — Injunction.** — If the secretary of state shall refuse to accept and file any petition for the initiative or for the referendum with the requisite number of signatures of qualified electors thereto attached, any citizen may apply, within ten (10) days after such refusal to the district court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state shall then file it, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office. On a showing that any petition filed is not legally sufficient, the court may enjoin the secretary of state and all other officers from certifying or printing on the official ballot for the ensuing election the ballot title and numbers of such measure. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the Supreme Court within ten (10) days after a decision is rendered. The district court of the fourth judicial district of the state of Idaho in and for Ada County shall have jurisdiction in all cases of measures to be submitted to the qualified electors of the state at large.

**History.**

1933, ch. 210, § 8, p. 431; am. 1988, ch. 48, § 5, p. 66.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

Injunction, [Idaho R. Civ. P. 65](#).

Writs of mandate, § 7-301 et seq.

**34-1809. Review of initiative and referendum measures by attorney general — Certificate of review prerequisite to assignment of ballot title — Ballot title — Judicial review.** — (1) After receiving a copy of the petition from the secretary of state as provided in section 34-1804, Idaho Code:

(a) The attorney general may confer with the petitioner and shall, within twenty (20) working days from receipt thereof, review the proposal for matters of substantive import and shall recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate.

(b) The recommendations of the attorney general shall be advisory only and the petitioner may accept or reject them in whole or in part.

(c) The attorney general shall issue a certificate of review to the secretary of state certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been communicated to the petitioner, and such certificate shall be issued whether or not the petitioner accepts such recommendations. The certificate of review shall be available for public inspection in the office of the secretary of state.

(2) Within fifteen (15) working days after the issuance of the certificate of review, the petitioner, if he desires to proceed with his sponsorship, shall file the measure, as herein provided, with the secretary of state for assignment of a ballot title, and the secretary of state shall thereupon submit to the attorney general two (2) copies of the measure filed.

(a) Within ten (10) working days after receiving copies of the petition, the attorney general shall provide ballot titles as provided for in this subsection and return one (1) copy of the petition to the secretary of state, with its ballot title.

(b) A copy of the ballot title as prepared by the attorney general shall be furnished by the secretary of state with the approved form of any initiative or referendum petition, as provided herein, to the person or persons or organization or organizations under whose authority the measure is initiated or referred.

(c) The ballot titles shall be used and printed on the covers of the petition when in circulation; the short title shall be printed in type not less than twenty (20) points on the covers of all such petitions circulated for signatures.

(d) The ballot title shall contain:

(i) Distinctive short title not exceeding twenty (20) words by which the measure is commonly referred to or spoken of and which shall be printed in the foot margin of each signature sheet of the petition.

(ii) A general title expressing in not more than two hundred (200) words the purpose of the measure.

(iii) The ballot title shall be printed with the numbers of the measure on the official ballot.

(e) In making the ballot title, the attorney general shall, to the best of his ability, give a true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure.

(3) Any person dissatisfied with the ballot title or the short title provided by the attorney general for any measure may appeal to the supreme court by petition, praying for a different title and setting forth the reason why the title prepared by the attorney general is insufficient or unfair.

(a) No appeal shall be allowed from the decision of the attorney general on a ballot title unless made within twenty (20) days after the ballot title is filed in the office of the secretary of state; provided however, that this section shall not prevent any later judicial proceeding to determine the sufficiency of such title, nor shall it prevent any judicial decision upon the sufficiency of such title.

(b) A copy of every such ballot title shall be served by the secretary of state upon the person offering or filing such initiative or referendum petition, or appeal. The service of the ballot title may be by mail or electronic transmission and shall be made forthwith when it is received from the attorney general by the secretary of state.

(c) The supreme court shall thereupon examine said measure, hear argument, and in its decision thereon certify to the secretary of state a

ballot title and a short title for the measure in accord with the intent of this section. The secretary of state shall print on the official ballot the title thus certified to him.

(4) Any qualified elector of the state of Idaho may, at any time after the attorney general has issued a certificate of review, bring an action in the supreme court to determine the constitutionality of any initiative.

### **History.**

1933, ch. 210, § 9, p. 431; am. 1979, ch. 106, § 1, p. 340; am. 1988, ch. 48, § 6, p. 66; am. 1994, ch. 400, § 1, p. 1263; am. 1997, ch. 266, § 7, p. 756; am. 2003, ch. 147, § 1, p. 423; am. 2019, ch. 96, § 16, p. 344.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

Secretary of state, § 67-901 et seq.

### **Amendments.**

The 2019 amendment, by ch. 96, substituted “provided for in this subsection” for “provided for below” near the end of paragraph (2)(a); and, in subsection (3), substituted “measure may appeal” for “measure, may appeal from his decision” near the middle of the introductory paragraph and substituted “mail or electronic transmission” for “mail, telegraph or facsimile” near the middle of the last sentence in paragraph (b).

### **Effective Dates.**

Section 17 of S.L. 2019, ch. 96 declared an emergency. Approved March 18, 2019.

## **JUDICIAL DECISIONS**

Analysis

[Constitutionality.](#)

[Justiciability.](#)



## Title.

- Defective.
- Long.
- Mandamus to compel.
- Preparation.
- Short.
- Validity.

## Constitutionality.

Subsection (4) is unconstitutional, as it constitutes an attempt by the legislature to broaden the supreme court's jurisdiction in contravention of the separation of powers doctrine in Idaho [Const., Art. II, § 1. \*Regan v. Denney\*, 437 P.3d 15 \(2019\).](#)

## Justiciability.

This section cannot compel the Idaho supreme court to decide a case that lacks a justiciable controversy. [Noh v. Cenarrusa, 137 Idaho 798, 53 P.3d 1217 \(2002\).](#)

The supreme court would take cognizance of the fact that at general election on November 4, initiative measure in question respecting right to work regardless of membership or nonmembership in labor organization had been duly voted on by the electorate and defeated, thus rendering moot questions involved in appeal of cause seeking to enjoin the placing of such initiative measure on the ballot on the ground of noncompliance with statutory requirements as to signing and certification of petition. [Dorman v. Young, 80 Idaho 435, 332 P.2d 480 \(1958\).](#)

## Title.

- Defective.

Where petition was filed for an initiated measure concerning the right to work whether or not a person was a member of a labor union, a short title furnished by attorney-general entitled "The Right to Work Initiative Proposed" was defective, since title did not refer to membership in a labor union. [In re Idaho State Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 \(1954\).](#)

Where attorney general's short title failed to capture the distinctive characteristics of the proposed initiative in that it inaccurately informed voters that the purpose of the initiative was to create a law prohibiting post-viability abortions, with exceptions, but, in fact, did not create a new law but rather deleted an exception to the existing ban on post-viability abortions, added a new exception to the ban, created new civil causes of action, new criminal liabilities and repealed existing criminal penalties against pregnant women who violated the chapter, the short title was not the product of an analysis of the initiative that distinguished the initiative from existing abortion laws and, as such, it required redrafting. *Buchin v. Lance*, 128 Idaho 266, 912 P.2d 634 (1995).

Attorney general's long title, which failed to provide voters with an accurate description of the purposes of initiative which proposed to repeal existing law imposing criminal penalties against pregnant women who violate the chapter and to create a new civil cause of action in which any person who violated the chapter could potentially be sued for "appropriate relief," and proposed to provide civil relief against medical abortion providers despite the fact that any party consented to injuries caused by the abortion, was insufficient, and, as such, required redrafting. *Buchin v. Lance*, 128 Idaho 266, 912 P.2d 634 (1995).

#### — Long.

Attorney general's long title of proposed initiative which would establish various state policies towards homosexuality, which expressed the purpose of the initiative by stating that it was an initiative relating to homosexuality and the state's authority to afford homosexuals minority status and then went through each section of the measure, summarizing the specific purpose of each section, expressed the purpose of the initiative without being argumentative or prejudicial. *ACLU, Idaho Chapter v. Echohawk*, 124 Idaho 147, 857 P.2d 626 (1993).

#### — Mandamus to Compel.

Mandamus will lie to compel the attorney-general to provide a ballot title for a referendum petition. The duty of the attorney-general in this regard is ministerial. *Girard v. Miller*, 55 Idaho 430, 43 P.2d 510 (1935).

#### — Preparation.

Supreme court cannot prepare a title itself but can only determine that a particular title chosen is defective. *In re Idaho State Fed'n of Labor*, 75 Idaho 367, 272 P.2d 707 (1954).

Legislature was authorized to delegate to attorney-general the task of selecting short title for initiated measures. *In re Idaho State Fed'n of Labor*, 75 Idaho 367, 272 P.2d 707 (1954).

Attorney-general in determining short title is performing a quasi judicial function. *In re Idaho State Fed'n of Labor*, 75 Idaho 367, 272 P.2d 707 (1954).

#### — Short.

Short title must set forth the distinguishing characteristics of the proposed measure so that the prospective signer will know what he is approving. *In re Idaho State Fed'n of Labor*, 75 Idaho 367, 272 P.2d 707 (1954).

Attorney general's short title, "An act establishing state policies regarding homosexuality" captured the distinctive characteristic of the proposed initiative using language by which it was commonly referred to as required by this section and was not argumentative or prejudicial, but instead was a true and impartial statement of the initiative. *ACLU, Idaho Chapter v. Echohawk*, 124 Idaho 147, 857 P.2d 626 (1993).

The purpose of the short title requirements of this section is to acquaint prospective signers with the distinctive characteristics of the proposed measure. *ACLU, Idaho Chapter v. Echohawk*, 124 Idaho 147, 857 P.2d 626 (1993).

#### — Validity.

Petition to determine validity of title selected by attorney-general is in the nature of a proceeding for a writ of certiorari or review. *In re Idaho State Fed'n of Labor*, 75 Idaho 367, 272 P.2d 707 (1954).

Supreme court in taking jurisdiction to determine validity of short title must do so with the intent of securing substantial justice. *In re Idaho State Fed'n of Labor*, 75 Idaho 367, 272 P.2d 707 (1954).

Where attorney general's short and long titles did not meet the demands of this section and of existing case law, any signatures collected by the

circulation of a petition with the invalid titles were not valid. **Buchin v. Lance**, 128 Idaho 266, 912 P.2d 634 (1995).

**34-1810. Printing and designation of ballot titles on official ballots. —**

(1) The secretary of state, at the time he furnishes to the county clerks of the several counties certified copies of the names of candidates for state and district offices shall furnish to each of said county clerks a certified copy of the ballot titles and numbers of the several measures to be voted upon at the ensuing general election, and he shall use for each measure the ballot title designated in the manner herein provided.

(a) Such ballot title shall not resemble, so far as to probably create confusion, any such title previously filed for any measure to be submitted at that election.

(b) The ballot shall include a clear and concise statement as to the effect of a “yes” or “no” vote, prepared jointly by the attorney general and secretary of state.

(2) The secretary of state shall number the measures consecutively beginning with number (1), in the order in which the measures were finally filed with the secretary. The measures shall be designated on the ballot as a “Proposition One,” “Proposition Two,” et cetera.

**History.**

1933, ch. 210, § 10, p. 431; am. 1988, ch. 48, § 7, p. 66; am. 2003, ch. 147, § 2, p. 423.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Effective Dates.**

Section 8 of S.L. 1988, ch. 48 declared an emergency. Approved March 18, 1988.

**34-1811. Manner of voting — Procedure when conflicting measures approved.** — The manner of voting upon measures submitted to the people shall be the same as is now or may be required and provided by law; no measure shall be adopted unless it shall receive an affirmative majority of the aggregate number of votes cast on such measure. If two (2) or more conflicting laws shall be approved by the people at the same election, the law receiving the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such law may not have received the greatest majority of affirmative votes. If two (2) or more conflicting amendments to the constitution shall be approved by the people at the same election, the amendment which receives the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such amendment may not have received the greatest majority of affirmative votes.

**History.**

1933, ch. 210, § 11, p. 431.

**STATUTORY NOTES**

**Cross References.**

Canvassing of returns, § 34-1813.

**34-1812. Fiscal impact statements.** — (1) After receiving a copy of an initiative petition from the secretary of state as provided in section 34-1804, Idaho Code, the division of financial management, in consultation with any other appropriate state or local agency, shall prepare an unbiased, good faith statement of the fiscal impact of the law proposed by the initiative. The division of financial management shall complete the fiscal impact statement and file it with the secretary of state's office within twenty (20) working days of having received the initiative petition from the secretary of state's office. The secretary of state shall immediately transmit a copy of the fiscal impact statement to the person or persons who filed the initiative petition pursuant to section 34-1804, Idaho Code.

(2) A fiscal impact statement shall describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the ballot measure is approved by the voters. The fiscal impact statement shall include both immediate expected fiscal impacts and an estimate of any state or local government long-term financial implications. A fiscal impact statement must be written in clear and concise language and shall avoid legal and technical terms whenever possible. Where appropriate, a fiscal impact statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context.

(3) A fiscal impact statement must include both a summary of the fiscal impact statement, not to exceed one hundred (100) words, and a more detailed statement of fiscal impact that includes the assumptions that were made to develop the fiscal impact. When collecting signatures, a signature gatherer shall offer a copy of the fiscal impact statement summary, along with a copy of the initiative and the sponsor's proposed funding source information, to the elector for review before signing. The fiscal impact statement summary and the sponsor's proposed funding source information shall also be published in the state voters' pamphlet and on the official ballot. The fiscal impact statement summary, the detailed fiscal impact statement, and the sponsor's proposed funding source information shall be made available to the public on the secretary of state's website no later than August 1.

(4) The provisions of this section shall not apply to a city or county ballot initiative.

**History.**

I.C., § 34-1812, as added by 2020, ch. 317, § 3, p. 902.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-1812, Pamphlet and arguments may be printed — Distribution to votes, which comprised S.L. 1933, ch. 210, § 12, p. 431; am. 1978, ch. 93, § 1, p. 178, was repealed by S.L. 1979, ch. 135, § 1.

**Compiler's Notes.**

Section 5 of S.L. 2020, ch. 317 provided: “Severability. The provisions of this act are hereby declared to be severable, and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”



**34-1812A. Arguments concerning initiative and referendum measures.** — Any voter or group of voters may on or before July 20 prepare and file an argument, not to exceed five hundred (500) words, for or against any measure. Such argument shall not be accepted unless accompanied by the name and address or names and addresses of the person or persons submitting it, or, if submitted on behalf of an organization, the name and address of the organization and the names and addresses of at least two (2) of its principal officers.

If more than one (1) argument for or more than one (1) argument against any measure is filed within the time prescribed, the secretary of state shall select one (1) of the arguments for printing in the voters' pamphlets. In selecting the argument the secretary of state shall be required to give priority in the order named to the arguments of the following: (1) The proponent of the initiative or referendum petition.

(2) Bona fide associations of citizens.

(3) Individual voters.

**History.**

I.C., § 34-1812A, as added by 1979, ch. 135, § 2, p. 430.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**34-1812B. Submission of rebuttal arguments.** — When the secretary of state has received the arguments which will be printed in the voters' pamphlet, the secretary of state shall immediately send copies of the arguments in favor of the proposition to the authors of the arguments against and copies of the arguments against to the authors of the arguments in favor. The authors may prepare and submit rebuttal arguments not exceeding two hundred and fifty (250) words. The rebuttal arguments must be filed no later than August 1. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

**History.**

I.C., § 34-1812B, as added by 1979, ch. 135, § 3, p. 430.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**34-1812C. Voters' pamphlet.** — (1) Not later than September 25 before any regular general election at which an initiative or referendum measure is to be submitted to the people, the secretary of state shall cause to be printed a voters' pamphlet which shall contain the following:

- (a) A complete copy of the title and text of each measure with the number and form in which the ballot title thereof will be printed on the official ballot;
- (b) A copy of the fiscal impact statement summary for a state measure;
- (c) A copy of the sponsor's proposed funding source information for a state measure; and
- (d) A copy of the arguments and rebuttals for and against each state measure.

(2) The secretary of state shall mail or distribute a copy of the voters' pamphlet to every household in the state. Sufficient copies of the voters' pamphlet shall also be sent to each county clerk. The county clerk and the secretary of state shall make copies of the voters' pamphlet available upon request.

(3) The voters' pamphlet shall be printed according to the following specifications:

- (a) The pages of the pamphlet shall be not smaller than 6 x 9 inches in size;
- (b) It shall be printed in clear, readable type, no less than 10-point, except that the text of any measure may be set forth in no less than 7-point type;
- (c) It shall be printed on a quality and weight of paper that, in the judgment of the secretary of state, best serves the voters;
- (d) If the material described in subsection (1) of this section is combined in a single publication with constitutional amendments, the entire publication shall be treated as a legal notice.

**History.**

**I.C., § 34-1812C**, as added by 1979, ch. 135, § 4, p. 430; am. 1984, ch. 114, § 1, p. 258; am. 2020, ch. 317, § 4, p. 902.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Amendments.**

The 2020 amendment, by ch. 317, in subsection (1), added present paragraphs (b) and (c) and redesignated former paragraph (b) as paragraph (d); and, in subsection (3), substituted “subsection (1) of this section” for “subsections (a) and (b) of this section” near the beginning of paragraph (d).

### **Compiler’s Notes.**

Section 5 of S.L. 2020, ch. 317 provided: “Severability. The provisions of this act are hereby declared to be severable, and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**34-1813. Counting, canvassing and return of votes — Effective dates.**

— (1) The votes on measures and questions shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers, as votes for candidates are counted, canvassed, and returned, and the abstract made by the several county auditors of votes on measures shall be returned to the secretary of state on separate abstract sheets in the manner provided for abstract of votes for state and county officers. It shall be the duty of the secretary of state, in the presence of the governor, to proceed within thirty (30) days after the election, and sooner if the returns be all received, to canvass the votes given for each measure, and the governor shall forthwith issue his proclamation, giving the whole number of votes cast in the state for and against such measure and question and declaring such measures as are approved by a majority of those voted thereon to be in full force and effect as the law of the state of Idaho from the date of said proclamation for any referendum measure. The effective date for an initiative measure shall be governed by the provisions of subsection (2) of this section. If two (2) or more measures shall be approved at said election which are known to conflict with each other or to contain conflicting provisions, he shall also proclaim which is paramount in accordance with the provisions of sections 34-1801 through 34-1822, Idaho Code.

(2)(a) A statewide initiative may contain an effective date, if passed, that shall be no earlier than July 1 of the year following the vote on the ballot initiative. If no effective date is specified in the petition, the effective date of a statewide initiative that has been approved by the electorate shall be July 1 of the following year.

(b) A city or county initiative may contain an effective date, if passed, that may be earlier than July 1 of the year following the vote on the ballot initiative, but no earlier than the mayor's proclamation as provided in [section 34-1801B, Idaho Code](#), or the proclamation by the board of county commissioners, as provided in [section 34-1801C, Idaho Code](#). If no effective date is specified in the petition, the effective date of a city or county initiative that has been approved by the electorate shall be July 1 of the following year.

**History.**

1933, ch. 210, § 13, p. 431; am. 2020, ch. 336, § 3, p. 977.

**STATUTORY NOTES****Cross References.**

Canvass of votes at general elections, § 34-1201 et seq.

Procedure when conflicting measures approved, § 34-1811.

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2020 amendment, by ch. 336, added “Effective dates” to the end of the section heading; designated the existing text as subsection (1); in subsection (1), substituted “proclamation for any referendum measure” for “proclamation” at the end of the second sentence and added the present next-to-last sentence; and added subsection (2).

**Compiler’s Notes.**

Section 5 of S.L. 2020, ch. 336 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**JUDICIAL DECISIONS**

**Cited in:** [Dorman v. Young, 80 Idaho 435, 332 P.2d 480 \(1958\).](#)

**34-1814. Who may sign petition — Effect of wrongful signing — Penalty for wrongful signing.** — Every person who is a qualified elector of the state of Idaho may sign a petition for the referendum or for the initiative for any measure which he is legally entitled to vote upon. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the same measure at one election, or who is not at the time of signing the same a legal voter of this state, or any officer or person wilfully violating any provision of this statute, shall, upon conviction thereof be punished by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in the penitentiary not exceeding two (2) years, or by both such fine and imprisonment, in the discretion of the court before which such conviction shall be had. Any such wrongful signatures are null and void and shall not be counted as a qualified signature. Any person circulating a petition, who knows, or who in the exercise of reasonable care should know, that a signature is forged and who shall thereafter fail to strike through and thereby void such signature, and any person in a position of supervision of such person who suffers or permits a forged signature to remain on a petition shall pay a fine of not less than one thousand dollars (\$1,000) for each such signature.

**History.**

1933, ch. 210, § 14, p. 431; am. 1997, ch. 266, § 8, p. 756.

**JUDICIAL DECISIONS**

**Qualified Elector.**

A “qualified elector” within the meaning of this section is one who, in addition to all other eligibility requirements, is registered to vote at the time of signing the initiative petition. *Dredge Mining Control — Yes!, Inc. v. Cenarrusa*, 92 Idaho 480, 445 P.2d 655 (1968).

Idaho Code 34-1814A

**34-1814A. Petition circulators receiving compensation and volunteers.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 34-1814A, as added by 1997, ch. 266, § 9, p. 756, was repealed by S.L. 1999, ch. 47, § 2, effective March 8, 1999.



**34-1815. False statements spoken or written concerning petition unlawful — Failure to disclose material provisions.** — It shall be unlawful for any person to wilfully or knowingly circulate, publish or exhibit any false statement or representation, whether spoken or written, or to fail to disclose any material provision in a petition, concerning the contents, purport or effect of any petition mentioned in sections 34-1801A through 34-1822, Idaho Code, for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such petition. It shall be unlawful for any person to solicit or obtain any signature on a petition without first showing the signer both the short title and the general title as defined in section 34-1809, Idaho Code, so that the signer has an opportunity to read them before signing the petition.

Any signature obtained without compliance with this section is null and void.

**History.**

1933, ch. 210, § 15, p. 431; am. 1997, ch. 266, § 10, p. 756.

**STATUTORY NOTES**

**Cross References.**

Penal provision, § 34-1822.

**JUDICIAL DECISIONS**

**Constitutionality.**

The first sentence in this section fails to withstand strict scrutiny; it is unconstitutionally vague in part, and creates, in another part, an unconstitutional strict liability offense. *Idaho Coalition United for Bears v. Cenarrusa*, 234 F. Supp. 2d 1159 (D. Idaho 2001).

**34-1816. Filing petition with false signatures unlawful.** — It shall be unlawful for any person to file in the office of any officer provided by law to receive such filing any petition mentioned in sections 34-1801 — 34-1822[, Idaho Code], to which is attached, appended or subscribed any signature which the person so filing such petition knows to be false or fraudulent or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto.

**History.**

1933, ch. 210, § 16, p. 431.

**STATUTORY NOTES**

**Cross References.**

Penal provision, § 34-1822.

**Compiler's Notes.**

The bracketed insertion near the middle of the section was added by the compiler to conform to the statutory citation style.

**34-1817. Circulating petition with false, forged or fictitious names unlawful.** — It shall be unlawful for any person to circulate or cause to be circulated any petition mentioned in sections 34-1801 — 34-1822[, Idaho Code], knowing the same to contain false, forged or fictitious names.

**History.**

1933, ch. 210, § 17, p. 431.

**STATUTORY NOTES**

**Cross References.**

Penal provision, § 34-1822.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**34-1818. False affidavit by any person unlawful.** — It shall be unlawful for any person to make any false affidavit concerning any petition mentioned in sections 34-1801 — 34-1822[, Idaho Code], or the signatures appended thereto.

**History.**

1933, ch. 210, § 18, p. 431.

**STATUTORY NOTES**

**Cross References.**

Penal provision, § 34-1822.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**34-1819. False return, certification or affidavit by public official unlawful.** — It shall be unlawful for any public official or employee knowingly to make any false return, certification or affidavit concerning any petition mentioned in sections 34-1801 — 34-1822[, Idaho Code], or the signatures appended thereto.

**History.**

1933, ch. 210, § 19, p. 431.

**STATUTORY NOTES**

**Cross References.**

Penal provision, § 34-1822.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**34-1820. Signing more than once or when not qualified unlawful. —**

It shall be unlawful for any person to knowingly sign his own name more than once to any petition mentioned in sections 34-1801 — 34-1822[, Idaho Code], or to sign his name to any such petition knowing himself at the time of such signing not to be qualified to sign the same.

**History.**

1933, ch. 210, § 20, p. 431.

**STATUTORY NOTES**

**Cross References.**

Penal provision, § 34-1822.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**34-1821. Felonious acts enumerated.** — It shall be a felony for any person to offer, propose or threaten to do any act mentioned in this section of or concerning any petition mentioned in sections 34-1801 — 34-1822[, Idaho Code], for any pecuniary reward or consideration: (a) To offer, propose, threaten or attempt to sell, hinder or delay any petition or any part thereof or of any signatures thereon mentioned in sections 34-1801 — 34-1822[, Idaho Code]; (b) To offer, propose, or threaten to desist, for a valuable consideration, from beginning, promoting or circulating any petition mentioned in sections 34-1801 — 34-1822[, Idaho Code], or soliciting signatures to any such petition; (c) To offer, propose, attempt or threaten in any manner or form to use any petition or power of promotion or opposition in any manner or form for extortion, blackmail or secret or private intimidation of any person or business interest.

**History.**

1933, ch. 210, § 21, p. 431.

**STATUTORY NOTES**

**Cross References.**

Penal provision, § 34-1822.

**Compiler's Notes.**

The bracketed insertions throughout this section were added by the compiler to conform to the statutory citation style.

**JUDICIAL DECISIONS**

**Constitutionality.**

Because there was no evidence that paying petition circulators on a per-signature basis invited cheating, clause (a) of this section was declared unconstitutional as violative of the [First Amendment](#). Clauses (b) and (c) were not challenged. [Idaho Coalition United for Bears v. Cenarrusa](#), 234 F. Supp. 2d 1159 (D. Idaho 2001).

## RESEARCH REFERENCES

**A.L.R.** — Validity, construction, and application of state statutes regulating or proscribing payment in connection with gathering signatures on nominating petitions for public office or initiative petitions. 40 A.L.R.6th 317.



**34-1822. Penalty for violations.** — Any person, either as principal or agent, violating any of the provisions of sections 34-1801 — 34-1822[, Idaho Code,] shall be punished upon conviction by imprisonment in the penitentiary or in the county jail not exceeding two (2) years, or by a fine not exceeding \$5000.00, or by both, excepting that imprisonment in the penitentiary and punishment by a fine shall be the only penalty for violation of any provision of section 34-1821[, Idaho Code].

**History.**

1933, ch. 210, § 22, p. 431.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions near the beginning and near the end of this section were added by the compiler to conform to the statutory citation style.

**34-1823. Severability.** — In the event that any part of chapter 18, title 34, Idaho Code, shall for any reason be determined void or unenforceable in any part thereof, the remainder thereof shall remain in full force and effect.

**History.**

I.C., § 34-1823, as added by 1997, ch. 266, § 11, p. 756.

**STATUTORY NOTES**

**Effective Dates.**

Section 12 of S.L. 1997, ch. 266 read: “This act shall be in full force and effect on and after July 1, 1997, and this act shall apply to all initiative petitions that have been submitted with qualifying signatures pursuant to [section 34-1804, Idaho Code](#), on and after July 1, 1997.”



## **CHAPTER 19**

### **CONGRESSIONAL DISTRICTS**

Section.

34-1901. Number of congressional districts.

34-1902. First congressional district. [Repealed.]

34-1903. Second congressional district. [Repealed.]

34-1904. Residence of candidates within district. [Repealed.]

**34-1901. Number of congressional districts.** — For the election of representatives in Congress, the state of Idaho is divided into two (2) congressional districts.

**History.**

1917, ch. 121, § 1, p. 408; compiled and reen. C.L. 6:1; C.S., § 66; I.C.A., § 33-1601.

### **34-1902. First congressional district. [Repealed.]**

Repealed by S.L. 2010, ch. 79, § 11, effective July 1, 2010.

#### **History.**

**I.C., § 34-1902**, as added by 1981 (Ex. Sess.), ch. 1, § 3, p. 4; am. 1992, ch. 1, § 1, p. 3.

### **STATUTORY NOTES**

#### **Prior Laws.**

A former § 34-1902, which comprised 1917, ch. 121, § 2, p. 408; compiled and reen. C.L., 6:2; C.S., § 67; I.C.A., § 33-1602; am. 1965 (E.S.), ch. 5, § 1, p. 21; am. 1971 (E.S.), ch. 8, § 1, p. 18, was repealed by S.L. 1981 (Ex. Sess.), ch. 1, § 1.

#### **Compiler's Notes.**

For more on Idaho congressional districts, see <https://legislature.idaho.gov/wp-content/uploads/legislators/District%20Maps.pdf>.

### **34-1903. Second congressional district. [Repealed.]**

Repealed by S.L. 2010, ch. 79, § 12, effective July 1, 2010.

#### **History.**

I.C., § 34-1903, as added by 1981 (Ex. Sess.), ch. 1, § 4, p. 4; am. 1992, ch. 1, § 2, p. 3.

### **STATUTORY NOTES**

#### **Prior Laws.**

A former § 34-1903, which comprised 1917, ch. 121, § 3, p. 408; compiled and reen. C.L. 6:3; C.S. § 68; I. C. A., § 33-1603; am. 1965 (E.S.), ch. 5, § 2, p. 21; am. 1971 (E.S.), ch. 8, § 2, p. 18, was repealed by S.L. 1981 (Ex. Sess.), ch. 1, § 2.

#### **Compiler's Notes.**

For more on Idaho congressional districts, see <https://legislature.idaho.gov/wp-content/uploads/legislators/District%20Maps.pdf>.

**34-1904. Residence of candidates within district. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1917, ch. 121, § 4, p. 409; reen. C.L. 6:4; C.S., § 69; I.C.A., § 33-1604, was repealed by S.L. 1996, ch. 28, § 28, effective February 15, 1996.





## **CHAPTER 20**

### **ELECTION CONTESTS OTHER THAN LEGISLATIVE AND STATE EXECUTIVE OFFICES**

#### **Section.**

34-2001. Grounds of contest.

34-2001A. Bond election and mill levy contests — Time for filing —  
Validation of elections and bonds.

34-2002. Term incumbent defined.

34-2003. Misconduct of judges.

34-2004. Jurisdiction — Contests over judicial offices.

34-2005. Jurisdiction — Removal of county seats and special questions.

34-2006. Jurisdiction — County and precinct officers.

34-2007. Who may contest elections.

34-2008. Complaint and security for costs.

34-2009. Complaint — Specific allegations.

34-2010. Issuance of summons.

34-2011. Time for trial.

34-2012. Postponement of trial.

34-2013. Procedure in general.

34-2014. Testimony — Subpoena for witnesses.

34-2015. Amendments.

34-2016. Form and service of process.

34-2017. Voters to testify as to qualifications.

34-2018. Inspection of ballots and poll books.

34-2019. Ballots and poll books — Return to county auditor.

34-2020. Liability for costs.

34-2021. Form of judgment.

34-2022. Determination of tie vote.

34-2023. Order for possession.

34-2024. Election declared void.

34-2025. Appeal and supersedeas.

34-2026. Judgment of affirmance.

34-2027. Cost of bond on appeal.

34-2028. Contest of nomination at primaries.

34-2029. Jurisdiction over primary contest.

34-2030. Filing of affidavit.

34-2031. Security for costs.

34-2032. Fraud or error by the election official.

34-2033. Discovery.

34-2034. Remedies.

34-2035. Appeals.

34-2036. Cost on appeal.

**34-2001. Grounds of contest.** — The election of any person to any public office, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be contested:

1. For malconduct, fraud, or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or any member of either board sufficient to change the result.

2. When the incumbent was not eligible to the office at the time of the election.

3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights.

4. When the incumbent has given or offered to any elector, or any judge, clerk or canvasser of the election, any bribe or reward in money or property for the purpose of procuring his election, or has committed any violation as set out in chapter 23, title 18, Idaho Code.

5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result.

6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result.

7. When the incumbent is in default as a collector and custodian of public money or property.

8. For any cause which shows that another person was legally elected.

**History.**

1890-1891, p. 57, § 132; reen. 1899, p. 33, § 119; reen. R.C. & C.L., § 5026; C.S., § 7274; I.C.A., § 33-1701; am. 1982, ch. 209, § 1, p. 571.

**STATUTORY NOTES**

**Cross References.**

Jurisdiction and proceedings in contest of state, executive, and legislative offices, § 34-2101 et seq.

Recall elections, § 34-1701 et seq.

School elections, § 33-401 et seq.

Usurpation of office, action for, § 6-601 et seq.

## **JUDICIAL DECISIONS**

### Analysis

Bond elections.

Burden of proof.

Eligibility of candidate.

Eligibility of voters.

Evidence.

Irrigation district officers.

Judicial candidates.

Jurisdiction.

Laches by contestant.

Malconduct.

Nature of proceedings.

People.

Time of eligibility.

### **Bond Elections.**

The remedy provided by this section and §§ 34-2005 and 34-2008, providing a statutory procedure for the contest of a special bond election, is exclusive as to matters that might be contested. *Harrison v. Board of County Comm'rs*, 68 Idaho 463, 198 P.2d 1013 (1948).

### **Burden of Proof.**

Burden of proof is on contestant to show for whom alleged illegal votes were cast. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

In order to overcome the prima facie effect of an election return, it is incumbent on the challenger to prove not only illegal votes, but also for whom they were cast. Both these elements of proof are required to show that the illegal votes affected the result, and that, but for them, appellant would have been elected. *Brannon v. City of Coeur d'Alene*, 153 Idaho 843, 292 P.3d 234 (2012).

### **Eligibility of Candidate.**

Ineligibility of a candidate for office at the time of election because of holding another office, the term of which will expire before the beginning of the term of the office for which he is a candidate, is not ground for contest of such candidate's election under subsection 2 of this section. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

### **Eligibility of Voters.**

In special bond election held on June 8, 1950, for construction of hospital, restriction of voting to persons, whose names appeared on 1949 tax rolls was proper, since 1950 tax rolls had not been completed at the time of the election. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

### **Evidence.**

It was reversible error not to admit in evidence ballots, ballot boxes, ballot box keys and election returns offered in evidence by appellant where there was nothing to indicate such evidence was not substantially in the same condition as at the time of the election, such evidence having been rejected by the trial court on the ground that it was not admissible in a quo warranto proceeding to try title to an office, only being admissible in an election contest. *Tiegs v. Patterson*, 81 Idaho 46, 336 P.2d 687 (1959).

### **Irrigation District Officers.**

Directors of irrigation district are public officers whose election may be contested under this section. *Hertle v. Ball*, 9 Idaho 193, 72 P. 953 (1903).

Water master of irrigation district is public officer whose right to office may be called in question by this section. *Whitten v. Chapman*, 45 Idaho 653, 264 P. 871 (1928).

Where appellant alleged in his complaint that he had received a majority of the votes cast in an election to choose a director from division of irrigation district, both appellee and appellant having been nominated for such office and their names appearing on the ballot, and he brought the action under the usurpation statute and has not in anywise contested the election, the filing of such action later than the twenty-day period provided for contesting an election would not be controlling as such limitation period was provided in the election contest statute, even though the secretary of the district had issued a certificate of election. [Tiegs v. Patterson, 79 Idaho 365, 318 P.2d 588 \(1957\)](#).

### **Judicial Candidates.**

A statute providing for nonpartisan nomination of district judges, under which the primary constituted a general election without any subsequent election for such offices unless no candidate or sufficient candidates to fill the offices to be filled received the majority of all votes cast, was not open to the objection that the election could not be considered an election as distinguished from a nomination because the statute made no provision for contesting a primary election, since election did not constitute an “election” as to any candidate who received a majority and the highest number of votes cast, and as to such candidate the contest statute was applicable. [Fisher v. Masters, 59 Idaho 366, 83 P.2d 212 \(1938\)](#).

### **Jurisdiction.**

District court had jurisdiction of proceedings by taxpayer to contest result of election to determine whether county commissioners should issue bonds to build a hospital based on contention that nontaxpayers were permitted to vote, regardless of whether suit was in equity or in law. [Henley v. Elmore County, 72 Idaho 374, 242 P.2d 855 \(1952\)](#).

### **Laches by Contestant.**

Where there was ample time and opportunity between the primary and the general election to have had any of the alleged disqualifications of the candidate for the office of prosecuting attorney heard or passed on, but contestant neglected to take any action whatever until after the election, contestant could not be heard to urge such objections, which, if permitted,

would disfranchise thousands of legal voters. *McNamara v. Wayne*, 67 Idaho 410, 182 P.2d 960 (1947).

### **Malconduct.**

This section does not define what constitutes malconduct of the officers of election, but it must be held that any proceedings which result in unfair elections, that deprive the qualified elector of the opportunity of peaceably casting his ballot and having it counted as cast, or that permit illegal votes to be cast and counted are within the statutory provisions. *Brannon v. City of Coeur d'Alene*, 153 Idaho 843, 292 P.3d 234 (2012).

Where there is no evidence on the record that would clearly establish that disputed votes in a municipal election were cast and counted illegally, and there is no evidence that any of the alleged irregularities on election day would have changed the outcome of the election, or that the final result was contrary to the actual will of the electorate, the election challenger failed to meet his burden, the district court did not err when it dismissed the challenger's claim of malconduct. *Brannon v. City of Coeur d'Alene*, 153 Idaho 843, 292 P.3d 234 (2012).

### **Nature of Proceedings.**

An election contest is of purely statutory origin, and is within the direction, control, and management of the political power of the state, and manner of conducting such contest and of determining questions arising thereunder is within the authority and control of the political power of state government as distinguished from the judicial power and authority thereof. *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908).

### **People.**

Word "people" in clause "any proposition submitted to a vote of the people may be contested," means the persons qualified to vote at the election. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

### **Time of Eligibility.**

The provisions of this section that one of the grounds for contesting an election is the ineligibility of the incumbent for office at the time of the election refers to the final determinative selection to the office, and not to



the nomination in a primary election. *Strecker v. Smith*, 66 Idaho 593, 164 P.2d 192 (1945).

**Cited in:** *Ball v. Campbell*, 6 Idaho 754, 59 P. 559 (1899); *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908); *Bradfield v. Avery*, 16 Idaho 769, 102 P. 687 (1909); *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

**34-2001A. Bond election and mill levy contests — Time for filing — Validation of elections and bonds.** — A. The provisions of this chapter with respect to the contest of elections shall be applicable to bond elections conducted by cities, counties, school districts and water and sewer districts, and to elections conducted by school districts for mill levy increases as authorized by sections 33-802, 33-803 and 33-804, Idaho Code. Any such contest shall be regarded as one contesting the outcome of the vote on the bond or mill levy proposition, rather than election to office, and the public entity calling the election rather than a person declared to have been elected to office, shall be regarded as the defendant.

B. When the validity of any bond or mill levy election is contested upon any of the grounds enumerated in [section 34-2001, Idaho Code](#), or upon any other grounds whatsoever the plaintiff or plaintiffs must, within forty (40) days after the votes are canvassed and the results thereof declared, file in the proper court a verified written complaint setting forth, in addition to the other requirements of this chapter, the following: (1) The name of the party contesting the bond or mill levy election, and that he is an elector of the public entity conducting the bond or mill levy election.

(2) The proposition or propositions voted on at the election which are contested.

(3) The particular grounds of such contest.

C. No such election contest shall be maintained and no bond or mill levy election shall be set aside or held invalid unless a complaint is filed as permitted hereunder within the period prescribed in this section. As to bond or mill levy elections which have been held prior to the effective date of this act, no such contest shall be maintained wherein it is alleged that the election should be set aside or held on any ground enumerated in [section 34-2001, Idaho Code](#), or on any other ground, unless such election contest be filed as herein provided within forty (40) days from and after the effective date of this act.

D. All bond elections conducted by cities, counties, school districts and water and sewer districts prior to the effective date of this act, and all

proceedings had in the authorization and issuance of the bonds authorized thereat, are hereby validated, ratified and confirmed and all such bonds are declared to constitute legally binding obligations in accordance with their terms. Nothing in this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which is being contested at the time this act takes effect, or any election the legality of which is contested within the forty (40) day period from and after the effective date of this act.

### **History.**

[I.C., § 34-2001A](#), as added by 1969, ch. 208, § 1, p. 604; am. 1976, ch. 291, § 1, p. 1008.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The phrases “the effective date of this act” and “at the time this act takes effect” in subsections C and D refer to the effective date of S.L. 1969, chapter 208, which was effective March 21, 1969.

### **Effective Dates.**

Section 2 of S.L. 1969, ch. 208 declared an emergency. Approved March 21, 1969.

## **JUDICIAL DECISIONS**

### **Analysis**

[City as defendant.](#)

[Failure to file bond.](#)

[City as Defendant.](#)

Only a city could be sued in conjunction with an election contest over a tax levy passed. [Bell v. City of Kellogg, 922 F.2d 1418 \(9th Cir. 1991\).](#)

[Failure to File Bond.](#)

Taxpayer's claim against an election, which brought about the passage of a tax levy, based on fraud, misrepresentation and breach of trust and

fiduciary duty fell within the election contest statute and was barred for failure to post a bond. *Bell v. City of Kellogg*, 922 F.2d 1418 (9th Cir. 1991).

Filing of a bond in a school district election contest is not jurisdictional, and it can be filed at any time after a clerk or district judge has determined the appropriate amount due; therefore, a district court erred in dismissing a complaint filed by several citizens without allowing them to post a bond. *Johnson v. Boundary Sch. Dist. # 101*, 138 Idaho 331, 63 P.3d 457 (2003).

**Cited in:** *Muench v. Paine*, 93 Idaho 473, 463 P.2d 939 (1970).

## RESEARCH REFERENCES

**A.L.R.** — Validity, construction and application of state statutory limitations periods governing election contests. 60 A.L.R.6th 481.

**34-2002. Term incumbent defined.** — The term “incumbent” in this chapter means the person whom the canvassers declare elected.

**History.**

1890-1891, p. 57, § 133; reen. 1899, p. 33, § 120; reen. R.C. & C.L., § 5027; C.S., § 7275; I.C.A., § 33-1702.

**34-2003. Misconduct of judges.** — When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election, unless the vote of the precinct, township or ward would change the result as to that office.

**History.**

1890-1891, p. 57, § 134; reen. 1899, p. 33, § 121; reen. R.C. & C.L., § 5028; C.S., § 7276; I.C.A., § 33-1703.

**34-2004. Jurisdiction — Contests over judicial offices.** — The Supreme Court shall hear and determine contests of the election of judges of the Supreme Court and appellate court and judges of the district courts, and in case they shall disagree, the governor shall act with them in determining the contest, but no judge of the Supreme Court shall sit upon the hearing of any case in which he is a party. The appropriate district court shall hear and determine contests of the retention election of judges of the magistrate courts.

**History.**

1890-1891, p. 57, § 137; am. 1899, p. 33, § 124; reen. R.C. & C.L., § 5029; C.S., § 7277; I.C.A., § 33-1704; am. 1982, ch. 209, § 2, p. 571.

**JUDICIAL DECISIONS**

**Election of District Judge.**

Under this section supreme court has original jurisdiction in the matter of a contest of the election of district judge. *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908).

**Cited in:** *Hertle v. Ball*, 9 Idaho 193, 72 P. 953 (1903).

**34-2005. Jurisdiction — Removal of county seats and special questions.** — The district courts of the respective counties shall hear and determine contests of election in regard to the removal of county seats, and in regard to any other subject which may by law be submitted to the vote of the people of the county, and the proceedings therein shall be conducted as near as may be hereinafter provided for contesting the election of county officers.

**History.**

1890-1891, p. 57, § 138; reen. 1899, p. 33, § 125; reen. R.C. & C.L., § 5030; C.S., § 7278; I.C.A., § 33-1705.

**STATUTORY NOTES**

**Cross References.**

Contests of right to sign petition in removal cases, § 31-205.

**JUDICIAL DECISIONS**

**Bond Elections.**

The remedy provided by this section and §§ 34-2001 and 34-2008, providing a statutory procedure for the contest of a special bond election, is exclusive as to matters that might be contested. *Harrison v. Board of County Comm'rs*, 68 Idaho 463, 198 P.2d 1013 (1948).

**Cited in:** *Hertle v. Ball*, 9 Idaho 193, 72 P. 953 (1903).



**34-2006. Jurisdiction — County and precinct officers.** — The district courts shall hear and determine contests of all other county, township and precinct officers, and officers of the cities and incorporated villages within the county.

**History.**

1890-1891, p. 57, § 139; reen. 1899, p. 33, § 126; reen. R.C. & C.L., § 5031; C.S., § 7279; I.C.A., § 33-1706.

**JUDICIAL DECISIONS**

**Irrigation District Officers.**

Jurisdiction to try and determine contest over right of elected district officers of irrigation district to hold office is lodged in district courts of state. [Hertle v. Ball, 9 Idaho 193, 72 P. 953 \(1903\).](#)

**34-2007. Who may contest elections.** — The election of any person declared elected to any office, other than executive state officers and members of the legislature, may be contested by any elector of the state, judicial district, county, township, precinct, city or incorporated village in and for which the person is declared elected.

**History.**

1890-1891, p. 57, § 148; reen. 1899, p. 33, § 135; reen. R.C. & C.L., § 5032; C.S., § 7280; I.C.A., § 33-1707.

**JUDICIAL DECISIONS**

**Cited in:** *Hertle v. Ball*, 9 Idaho 193, 72 P. 953 (1903).

**34-2008. Complaint and security for costs.** — The contestants shall file in the proper court, within twenty (20) days after the votes are canvassed, a complaint setting forth the name of the contestant, and that he is an elector competent to contest such election; the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which complaint shall be verified by the affidavit of the contestant, that the causes set forth are true as he verily believes. The contestant must also file a bond, with security to be approved by the clerk of the court or district judge, as the case may be, conditioned to pay all costs in case the election be confirmed, the complaint dismissed, or the prosecution fail.

### **History.**

1890-1891, p. 57, § 149; reen. 1899, p. 33, § 136; reen. R.C. & C.L., § 5033; C.S., § 7281; I.C.A., § 33-1708.

## **JUDICIAL DECISIONS**

### Analysis

Bond elections.

Complaint.

Failure to file bond.

### **Bond Elections.**

The remedy provided by this section and §§ 34-2001 and 34-2005, providing a statutory procedure for the contest of a special bond election, is exclusive as to matters that might be contested. *Harrison v. Board of County Comm'rs*, 68 Idaho 463, 198 P.2d 1013 (1948).

### **Complaint.**

Complaint in election contest which charges a number of omissions by judges in permitting certain things to be done, but fails to charge that such acts were done with the knowledge or consent of the judges, is insufficient. *Ball v. Campbell*, 6 Idaho 754, 59 P. 559 (1899).

Complaint to contest an election under this section must allege and show facts which disqualify incumbent, or person declared elected, at time of election. *Bradfield v. Avery*, 16 Idaho 769, 102 P. 687 (1909).

Where appellant alleged in his complaint that he had received a majority of the votes cast in an election to choose a director from division of irrigation district, both appellee and appellant having been nominated for such office and their names appearing on the ballot, and he brought the action under the usurpation statute and has not in anywise contested the election, the filing of such action later than the twenty day period provided for contesting an election would not be controlling as such limitation period was provided in the election contest statute, even though the secretary of the district had issued a certificate of election. *Tiegs v. Patterson*, 79 Idaho 365, 318 P.2d 588 (1957).

#### **Failure to File Bond.**

When proper bond is not filed and approved, contest is properly dismissed. *Horne v. Beaton*, 46 Idaho 541, 269 P. 89 (1928).

**Cited in:** *Johnson v. Boundary Sch. Dist. # 101*, 138 Idaho 331, 63 P.3d 457 (2003).

**34-2009. Complaint — Specific allegations.** — When the reception of illegal or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, if known, with the precinct, township or ward where they voted or offered to vote, shall be set forth in the complaint.

**History.**

1890-1891, p. 57, § 150; reen. 1899, p. 33, § 137; reen. R.C. & C.L., § 5034; C.S., § 7282; I.C.A., § 33-1709.

**34-2010. Issuance of summons.** — Upon the filing of such complaint summons shall issue against the person whose office is contested, as prescribed in the Idaho Rules of Civil Procedure.

**History.**

1890-1891, p. 57, § 151; reen. 1899, p. 33, § 138; reen. R.C. & C.L., § 5035; C.S., § 7283; I.C.A., § 33-1710; am. 1982, ch. 209, § 3, p. 571.

**STATUTORY NOTES**

**Cross References.**

Service of summons, [Idaho R. Civ. P. 4](#).

**34-2011. Time for trial.** — The cause shall stand for trial at the expiration of thirty (30) days from the time of service of the summons and complaint, if the court shall then be in session; otherwise, on the first day of the next term thereafter.

**History.**

1890-1891, p. 57, § 152; reen. 1899, p. 33, § 139; reen. R.C. & C.L., § 5036; C.S., § 7284; I.C.A., § 33-1711.

**34-2012. Postponement of trial.** — The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement are in the discretion of the court.

**History.**

1890-1891, p. 57, § 153; reen. 1899, p. 33, § 140; reen. R.C. & C.L., § 5037; C.S., § 7285; I.C.A., § 33-1712.



**34-2013. Procedure in general.** — The proceedings shall be held according to the Idaho Rules of Civil Procedure so far as practicable, but shall be under the control and direction of the court, which shall have all the powers necessary to the right hearing and determination of the matter; to compel the attendance of witnesses, swear them and direct their examination; to punish for contempt in its presence or by disobedience to its lawful mandate; to adjourn from day to day; to make any order concerning immediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case.

**History.**

1890-1891, p. 57, § 154; reen. 1899, p. 33, § 141; reen. R.C. & C.L., § 5038; C.S., § 7286; I.C.A., § 33-1713; am. 1982, ch. 209, § 4, p. 571.

**STATUTORY NOTES**

**Cross References.**

Contempt, § 7-601 et seq.

**JUDICIAL DECISIONS**

Analysis

Burden of proof.

Evidence.

Subpoena.

**Burden of Proof.**

General rule of burden of proof applies to election cases. Contestant must prove that result of election would have been different if illegal votes had not been received. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

General rule is that contestant has burden of proving for whom illegal votes were cast in order to show his own election. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

## **Evidence.**

In proceeding filed by taxpayer contesting election wherein he alleged in complaint that 29 of 34 persons voting illegally had voted “Yes,” and 18 of the voters called stated they had voted “Yes,” defendant was entitled to introduce evidence that those voters not called as witnesses voted “No,” even though answer of defendants alleged that none of the voters specified in complaint voted illegally. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

## **Subpoena.**

Nothing in this section, nor the rules of civil procedure, requires the district court to provide subpoenas to out-of-state, non-party witnesses: service of such subpoenas will only occur at the request of a party to the proceeding. *Brannon v. City of Coeur d’Alene*, 153 Idaho 843, 292 P.3d 234 (2012).

**34-2014. Testimony — Subpoena for witnesses.** — The testimony may be oral, or by depositions taken pursuant to the Idaho Rules of Civil Procedure. Subpoenas for witnesses may be issued pursuant to the Idaho Rules of Civil Procedure.

**History.**

1890-1891, p. 57, § 155; reen. 1899, p. 33, § 142; reen. R.C. & C.L., § 5039; C.S., § 7287; I.C.A., § 33-1714; am. 1982, ch. 209, § 5, p. 571.

**STATUTORY NOTES**

**Cross References.**

Depositions, [Idaho R. Civ. P. 27](#).

Subpoena for witnesses, [Idaho R. Civ. P. 45](#).

**JUDICIAL DECISIONS**

**Subpoena.**

Nothing in this section, nor the rules of civil procedure, requires the district court to provide subpoenas to out-of-state, non-party witnesses: service of such subpoenas will only occur at the request of a party to the proceeding. *Brannon v. City of Coeur d'Alene*, [153 Idaho 843, 292 P.3d 234 \(2012\)](#).

**34-2015. Amendments.** — The proceedings shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest. If any part of the causes are held insufficient they may be amended, but the incumbent will be entitled to an adjournment if he state [states] on oath that he has a matter to answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court deems reasonable; but if all the causes are held insufficient, and an amendment is asked the adjournment shall be at the cost of the contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed.

**History.**

1890-1891, p. 57, § 156; reen. 1899, p. 33, § 143; reen. R.C. & C.L., § 5040; C.S., § 7288; I.C.A., § 33-1715.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in the second sentence was added by the compiler to supply the correct grammatical term.

**34-2016. Form and service of process.** — The style, form and manner of service of process and papers, and the fees of officers and witnesses shall be the same as in other cases in the court where the cause is tried.

**History.**

1890-1891, p. 57, § 157; reen. 1899, p. 33, § 144; reen. R.C. & C.L., § 5041; C.S., § 7289; I.C.A., § 33-1716.

**STATUTORY NOTES**

**Cross References.**

Fees of county officers, § 31-3201 et seq.

Service of papers other than summons, [Idaho R. Civ. P. 5](#).

**34-2017. Voters to testify as to qualifications.** — (a) The court may require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter; and if he was not a qualified voter in the county where he voted, then to answer for whom he voted; and if the witness answer [answers] such questions no part of his testimony on that trial shall be used against him in any criminal action.

(b) No testimony shall be received as to any illegal votes unless the party contesting the election delivers to the opposing party at least three (3) days before trial, a written list of the number of illegal votes and by whom given, which he intends to prove on such trial. No testimony shall be received as to any illegal votes, except as to such as are specified in this list.

**History.**

1890-1891, p. 57, § 158; reen. 1899, p. 33, § 145; reen. R.C. & C.L., § 5042; C.S., § 7290; I.C.A., § 33-1717; am. 1982, ch. 209, § 6, p. 571.

**STATUTORY NOTES**

**Cross References.**

Disqualifications of electors, § 34-403.

Qualifications of electors, § 34-402.

**Compiler's Notes.**

The bracketed insertion near the end of subsection (a) was added by the compiler to supply the correct grammatical term.

**JUDICIAL DECISIONS**

**Evidence.**

In proceeding filed by taxpayer contesting election wherein he alleged in complaint that 29 of 34 persons voting illegally had voted “Yes,” and 18 of the voters called stated they had voted “Yes,” defendant was entitled to introduce evidence that those voters not called as witnesses voted “No,” even though answer of defendants alleged that none of the voters specified

in complaint voted illegally. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

**34-2018. Inspection of ballots and poll books.** — If an inspection of the ballots or poll books of any election district in this state shall become necessary for the determination of any election contest before any court, the presiding judge thereof may, by order naming the district or districts, require the proper officer to procure the same from the county auditor, or other person in whose possession or custody the same may be, and such clerk or person shall deliver the same to said officer, who shall deliver them unopened to such presiding judge.

**History.**

1890-1891, p. 57, § 159; reen. 1899, p. 33, § 146; reen. R.C. & C.L., § 5043; C.S., § 7291; I.C.A., § 33-1718.

**JUDICIAL DECISIONS**

Analysis [Ballots as best evidence.](#)

[Introduction in evidence.](#)

**[Ballots as Best Evidence.](#)**

Ballots cast in election are the best evidence of how electors voted, if it is shown that such ballots are brought into court in exactly the same condition they were in when they were cast by voters and counted at election. [Viel v. Summers, 35 Idaho 182, 209 P. 454 \(1922\).](#)

**[Introduction in Evidence.](#)**

Party introducing ballots in evidence must show substantial compliance with statutes relating to care of ballots in question. [Viel v. Summers, 35 Idaho 182, 209 P. 454 \(1922\).](#)



**34-2019. Ballots and poll books — Return to county auditor.** — The presiding officer shall open and inspect the same in open court, in the presence of the parties or their attorneys, and immediately after such inspection shall again seal them in an envelope and return them, by mail or otherwise, to the office of the county auditor in which they were at first required to be filed.

**History.**

1890-1891, p. 57, § 160; reen. 1899, p. 33, § 147; reen. R.C. & C.L., § 5044; C.S., § 7292; I.C.A., § 33-1719.

**34-2020. Liability for costs.** — (a) The contestant and the incumbent are liable to the officers and witnesses for the costs made by them respectively. But if the election be confirmed, or the complaint be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs, and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs.

(b) If the election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the returns, the contest costs shall be a charge against the county or political subdivision where the election was held.

### **History.**

1890-1891, p. 57, § 161; reen. 1899, p. 33, § 148; reen. R.C. & C.L., § 5045; C.S., § 7293; I.C.A., § 33-1720; am. 1982, ch. 209, § 7, p. 571.

## **STATUTORY NOTES**

### **Cross References.**

Security for costs of contesting election, § 34-2218.

## **JUDICIAL DECISIONS**

### **Displacement in Tort Claim Actions.**

This section and § 6-610 have been displaced in tort claim actions by the clear language of § 6-918A; both of them antedate § 6-918A and neither of them has ever contained express and specific language establishing an exception to the exclusive scope of § 6-918A. *Kent v. Pence*, 116 Idaho 22, 773 P.2d 290 (Ct. App. 1989).

**34-2021. Form of judgment.** — The judgment of the court in cases of contested election shall confirm or annul the election according to the right of the matter; or, in case the contest is in relation to the election of some person to an office, shall declare as elected the person who shall appear to be duly elected or, in the alternative, order the office to be filled according to chapter 9, title 59, Idaho Code, or order a new election to be held at a time and place as determined by the court.

**History.**

1890-1891, p. 57, § 162; reen. 1899, p. 33, § 149; reen. R.C. & C.L., § 5046; C.S., § 7294; I.C.A., § 33-1721; am. 1982, ch. 209, § 8, p. 571.

**JUDICIAL DECISIONS**

**Order for New Election Upheld.**

Because the district court “exercised reason” when it found that election results were close and that certain qualified voters had been turned away, it was reasonable for the court to order a new election. *Nelson v. Big Lost River Irrigation Dist.*, 133 Idaho 139, 983 P.2d 212 (1999).

**34-2022. Determination of tie vote.** — If it appears that two (2) or more persons have — or would have had if the legal ballots cast or intended to be cast for them had been counted — the highest and an equal number of votes for the same office, the persons receiving such votes shall decide by lot, in such manner as the court shall by written order direct, which of them shall be declared duly elected, and the judgment shall be entered accordingly.

**History.**

1890-1891, p. 57, § 163; reen. 1899, p. 33, § 150; reen. R.C. & C.L., § 5047; C.S., § 7295; I.C.A., § 33-1722.

**34-2023. Order for possession.** — When either the contestant or incumbent shall be in possession of the office by holding over, or otherwise, the court shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the court, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same; and the sheriff shall execute such order as other writs.

**History.**

1890-1891, p. 57, § 164; reen. 1899, p. 33, § 151; reen. R.C. & C.L., § 5048; C.S., § 7296; I.C.A., § 33-1723.

**STATUTORY NOTES**

**Cross References.**

Duties of sheriff generally, § 31-2201 et seq.

Execution of judgments generally, § 11-301 et seq.

**34-2024. Election declared void.** — When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the election shall be declared void.

**History.**

1890-1891, p. 57, § 165; reen. 1899, p. 33, § 152; reen. R.C. & C.L., § 5049; C.S., § 7297; I.C.A., § 33-1724.

**34-2025. Appeal and supersedeas.** — (a) The party against whom judgment is rendered in cases tried in the district court may appeal to the Supreme Court, and if the appellant be in possession of the office, such appeal shall not supersede the execution of the judgment of the court, as provided in the preceding section, unless he give a bond with security, to be approved by the court, in a sum to be fixed by the court, and which shall be at least double the probable compensation of such officer for six (6) months, which bond shall be conditioned that he will prosecute his appeal without delay, and that if the judgment appealed from be affirmed he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered, and such bond shall contain the express consent that judgment may be rendered against the sureties on the appeal as provided in the following section.

(b) All appeals to the Supreme Court shall be brought within ten (10) days of the judgment by the district court.

### **History.**

1890-1891, p. 57, § 166; reen. 1899, p. 33, § 153; reen. R.C. & C.L., § 5050; C.S., § 7298; I.C.A., § 33-1725; am. 1982, ch. 209, § 9, p. 571.

## **STATUTORY NOTES**

### **Cross References.**

Appeals generally, § 13-201 et seq.

## **JUDICIAL DECISIONS**

### **Bond.**

There is no law providing that contestant adjudged to be entitled to office shall furnish a bond that he will pay compensation received by him pending appeal if judgment should be adverse. *Dotson v. Cassia County*, 35 Idaho 382, 206 P. 810 (1922).

Where appellant files no bond, no warrant can be legally drawn for any part of salary until proceedings are finally determined. *Dotson v. Cassia County*, 35 Idaho 382, 206 P. 810 (1922).

This section modifies § 59-504 to extent that in case officer furnishes supersedeas bond on appeal, salary may be paid to him pending determination. *Dotson v. Cassia County*, 35 Idaho 382, 206 P. 810 (1922).



**34-2026. Judgment of affirmance.** — If upon the appeal the judgment be affirmed, the appellate court shall render judgment against the appellant and the sureties on his bond, or either of them, for the amount which the appellee is entitled to recover from the appellant on account of such contest, together with the costs; but in such case the sureties, or either of them, shall be entitled to produce and examine witnesses concerning the amount of such recovery.

**History.**

1890-1891, p. 57, § 167; reen. 1899, p. 33, § 154; reen. R.C. & C.L., § 5051; C.S., § 7299; I.C.A., § 33-1726.

**34-2027. Cost of bond on appeal.** — If upon appeal the appellant shall not be in possession of the office, he shall give bond, with security to be approved by the court where the judgment is rendered, conditioned to pay all costs that may be adjudged against him upon such appeal.

**History.**

1890-1891, p. 57, § 168; reen. 1899, p. 33, § 155; reen. R.C. & C.L., § 5052; C.S., § 7300; I.C.A., § 33-1727.

**34-2028. Contest of nomination at primaries.** — A candidate at a primary election may contest the nomination of any candidate for the same office based upon the grounds as set out in this chapter.

**History.**

I.C., § 34-2028, as added by 1982, ch. 209, § 10, p. 571.

**STATUTORY NOTES**

**Cross References.**

Contest of primary elections, § 34-2121.

**34-2029. Jurisdiction over primary contest.** — The district court in the respective county in which the alleged error or omission occurred shall be the court in which jurisdiction shall rest.

**History.**

I.C., § 34-2029, as added by 1982, ch. 209, § 11, p. 571.

**STATUTORY NOTES**

**Cross References.**

Contest of primary elections, § 34-2121.

**34-2030. Filing of affidavit.** — A candidate wishing to contest a primary election shall file an affidavit with the appropriate court within five (5) days of the completion of the canvass of the election. The affidavit shall set forth information as required in section 34-2008, Idaho Code. The affidavit shall be served on all necessary parties in the same manner as a complaint and summons are served pursuant to the Idaho Rules of Civil Procedure.

**History.**

I.C., § 34-2030, as added by 1982, ch. 209, § 12, p. 571.

**STATUTORY NOTES**

**Cross References.**

Filing of affidavit, legislative or state executive office, § 34-2124.

**34-2031. Security for costs.** — Upon filing of the affidavit the contestant shall file with the court a bond, in the amount of five hundred dollars (\$500), to be used to pay costs of the contestee in the event the primary election be confirmed or the prosecution fail.

**History.**

I.C., § 34-2031, as added by 1982, ch. 209, § 13, p. 571.

**STATUTORY NOTES**

**Cross References.**

Security for costs of contest, § 34-2118.

**34-2032. Fraud or error by the election official.** — If the primary election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the election returns, the contest costs shall be a charge against the county or city where the election was held.

**History.**

I.C., § 34-2032, as added by 1982, ch. 209, § 14, p. 571.

**STATUTORY NOTES**

**Cross References.**

Fraud or error by election official, legislative or state executive office, § 34-2124.

**34-2033. Discovery.** — The court may order the production of such evidence as it deems necessary for the proper disposition of the primary contest pursuant to the Idaho Rules of Civil Procedure. The election contest shall be given priority on the court's calendar.

**History.**

I.C., § 34-2033, as added by 1982, ch. 209, § 15, p. 571.

**STATUTORY NOTES**

**Cross References.**

Discovery in primary contests of legislative and state executive offices, § 34-2125.



**34-2034. Remedies.** — The court shall render an opinion in a primary contest as soon as is reasonably possible and shall prescribe such remedies as provided in this chapter as it deems just.

**History.**

I.C., § 34-2034, as added by 1982, ch. 209, § 16, p. 571.

**STATUTORY NOTES**

**Cross References.**

Remedies in primary contest of legislative or state executive office, § 34-2126.

**34-2035. Appeals.** — (a) In primary election contests, the party against whom judgment is rendered on cases filed in the district court may appeal to the Supreme Court. The appeal shall be taken within ten (10) days of the judgment by the district court.

(b) The Supreme Court shall give the primary contest appeal priority on its calendar.

**History.**

I.C., § 34-2035, as added by 1982, ch. 209, § 17, p. 571.

**STATUTORY NOTES**

**Cross References.**

Appeals, contests of legislative or state executive office, § 34-2127.

**34-2036. Cost on appeal.** — The appellant shall file a bond sufficient to cover the cost of appeal of a primary contest. Costs shall be awarded to the prevailing party on appeal. The amount of the bond on appeal shall be set by the court.

**History.**

I.C., § 34-2036, as added by 1982, ch. 209, § 18, p. 571.

**STATUTORY NOTES**

**Cross References.**

Costs on appeal, contests of legislative and state executive offices, § 34-2128.

**Effective Dates.**

Section 39 of S.L. 1982, ch. 209 declared an emergency. Approved March 29, 1982.



## **CHAPTER 21**

### **ELECTION CONTESTS ACT**

#### **Section.**

34-2101. Short title — Intent.

34-2102. Definitions.

34-2103. Jurisdiction — Contests over legislative offices — Contests over executive offices.

34-2104. Grounds of contest.

34-2105. Legislative rules.

34-2106. Contest for legislative offices — Exception regarding presiding officers.

34-2107. Misconduct of election judges — When sufficient to set aside an election.

34-2108. Notice of contest — Legislative — Executive department — Grounds — Service — Anticipated discovery.

34-2109. Summary dismissal.

34-2110. Examination of witnesses — Subpoenas.

34-2111. Testimony — How taken, certified and preserved.

34-2112. Production of papers — Refusal or neglect to produce a misdemeanor.

34-2113. Examination of poll books and ballots.

34-2114. Contest papers delivered to presiding officers.

34-2115. Notice of receiving papers.

34-2116. Opening and custody of papers — Appointment of committee.

34-2117. Preservation of evidence.

34-2118. Security for costs — Assessment of costs and fees — Assessment of attorney's fees.

- 34-2119. Forms of relief.
- 34-2120. Contest of nomination at primaries.
- 34-2121. Jurisdiction over primary contests.
- 34-2122. Filing of affidavit.
- 34-2123. Security for costs.
- 34-2124. Fraud or error by the election official.
- 34-2125. Discovery.
- 34-2126. Remedies.
- 34-2127. Appeals.
- 34-2128. Cost on appeal.

**34-2101. Short title — Intent.** — (1) This chapter shall be known and may be cited as the “Election Contests Act.”

(2) The purpose of this act is to simplify and clarify the laws governing election contests of legislative seats and election contests for all officers of the executive department.

### **History.**

**I.C., § 34-2101**, as added by 2017, ch. 293, § 2, p. 767.

## **STATUTORY NOTES**

### **Prior Laws.**

Former chapter 21 of Title 34, Election Contests — Legislature and State Executive Offices, which comprised the following sections, was repealed by S.L. 2017, ch. 293, § 1, effective July 1, 2017.

34-2101. Grounds of contest. [R.S., § 5026; am. 1890-1891, p. 57, § 132; reen. 1899, p. 33, § 119; am. R.C., § 39; reen. 1909, p. 333; reen. C.L., § 39; C.S., § 80; I.C.A., § 33-1801; am. 1982, ch. 209, § 19, p. 571.]

34-2102. Incumbent defined. [1890-1891, p. 57, § 133; reen. 1899, p. 33, § 120; reen. R.C., § 40; reen. C.L., § 40; C.S., § 81; I.C.A., § 33-1802.]

34-2103. Misconduct of election judges — When sufficient to vitiate election. [1890-1891, p. 57, § 134; reen. 1899, p. 33, § 121; reen. R.C., § 41; reen. C.L., § 41; C.S., § 82; I.C.A., § 33-1803.]

34-2104. Jurisdiction — Contests over executive offices. [1890-1891, p. 57, § 135; reen. 1899, p. 33, § 122; am. R.C., § 42; reen. C.L., § 42; C.S., § 83; I.C.A., § 33-1804.]

34-2105. Jurisdiction — Contests over legislative offices. [1890-1891, p. 57, § 136; reen. 1899, p. 33, § 123; reen. R.C., § 43; reen. C.L., § 43; C.S., § 84; I.C.A., § 33-1805.]

34-2106. Notice of contest. [1890-1891, p. 57, § 140; reen. 1899, p. 33, § 127; reen. R.C. & C.L., § 44; C.S., § 85; I.C.A., § 33-1806.]

34-2107. Examination of witnesses. [I.C., § 34-2107, as added by 1982, ch. 209, § 21, p. 571.]

34-2108. Subpoenas — Application for. [1880, p. 257, § 13; am. R.S., § 131; am. R.C. & C.L., § 46; C.S., § 87; I.C.A., § 33-1808; am. 1969, ch. 115, § 3, p. 373; am. 1982, ch. 209, § 22, p. 571.]

34-2109. Subpoenas — How issued. [1880, p. 257, § 14; am. R.S., § 132; reen. R.C. & C.L., § 47; C.S., § 88; I.C.A., § 33-1809; am. 1982, ch. 209, § 23, p. 571.]

34-2110. Disobedience of subpoena — Penalty. [1880, p. 257, § 16; am. R.S., § 134; reen. R.C. & C.L., § 48; C.S., § 89; I.C.A., § 33-1810.]

34-2111. Production of papers — Refusal or neglect to produce a misdemeanor. Annotations

34-2112. Witnesses' fees and mileage. 1880, p. 257, § 20; am. R.S., § 138; reen. R.C. & C.L., § 50; C.S., § 91; I.C.A., § 33-1812; am. 1982, ch. 209, § 25, p. 571.]

34-2113. Testimony — How taken, certified and preserved. [1890-1891, p. 57, § 142; reen. 1899, p. 33, § 129; am. R.C. & C.L., § 51; C.S., § 92; I.C.A., § 33-1813; am. 1982, ch. 209, § 26, p. 571.]

34-2114. Examination of poll books and ballots. [1890-1891, p. 57, § 143; reen. 1899, p. 33, § 130; reen. R.C. & C.L., § 52; C.S., § 93; I.C.A., § 33-1814.]

34-2115. Fees of officers. [1880, p. 257, § 21; am. R.S., § 139; reen. R.C. & C.L., § 53; C.S., § 94; I.C.A., § 33-1815.]

34-2116. Contest papers delivered to presiding officers. [1890-1891, p. 57, § 144; reen. 1899, p. 33, § 131; reen. R.C. & C.L., § 54; C.S., § 95; I.C.A., § 33-1816; am. 1982, ch. 209, § 27, p. 571.]

34-2117. Notice of receiving papers. [1890-1891, p. 57, § 145; reen. 1899, p. 33, § 132; am. R.C. & C.L., § 55; C.S., § 96; I.C.A., § 33-1817.]

34-2118. Opening and custody of papers. [1890-1891, p. 57, § 146; reen. 1899, p. 33, § 133; reen. R.C. & C.L., § 56; C.S., § 97; I.C.A., § 33-1818.]

34-2119. Preservation of evidence. [1890-1891, p. 57, § 147; reen. 1899, p. 33, § 134; reen. R.C. & C.L., § 57; C.S., § 98; I.C.A., § 33-1819.]



34-2120. Security for costs — Assessment of costs. [I.C., § 34-2120, as added by 1982, ch. 209, § 28, p. 571.]

34-2121. Form of relief. [I.C., § 34-2121, as added by 1982, ch. 209, § 29, p. 571.]

34-2122. Contest of nomination at primaries. [I.C., § 34-2122, as added by 1982, ch. 209, § 30, p. 571.]

34-2123. Jurisdiction over primary contests. [I.C., § 34-2123, as added by 1982, ch. 209, § 31, p. 571.]

34-2124. Filing of affidavit. [I.C., § 34-2124, as added by 1982, ch. 209, § 32, p. 571.]

34-2125. Security for costs. [I.C., § 34-2125, as added by 1982, ch. 209, § 33, p. 571.]

34-2126. Fraud or error by the election official. [I.C., § 34-2126, as added by 1982, ch. 209, § 34, p. 571.]

34-2127. Discovery. [I.C., § 34-2127, as added by 1982, ch. 209, § 35, p. 571.]

34-2128. Remedies. [I.C., § 34-2128, as added by 1982, ch. 209, § 36, p. 571.]

34-2129. Appeals. [I.C., § 34-2129, as added by 1982, ch. 209, § 37, p. 571.]

34-2130. Cost on appeal. [I.C., § 34-2130, as added by 1982, ch. 209, § 38, p. 571.]

### **Compiler's Notes.**

The term “this act” in subsection (2) refers to S.L. 2017, Chapter 293, which is codified as §§ 18-2315 and 34-2101 through 34-2128.

**34-2102. Definitions.** — For the purposes of this chapter, the following terms have the following meanings:

(1) “Body” means the Idaho senate or the Idaho house of representatives or both.

(2) “Contestee” means the individual against whom the contest of election is filed.

(3) “Contestor” means the individual who files the contest of election.

(4) “Elector” has the same meaning as “qualified elector” provided in [section 34-104, Idaho Code](#).

(5) “Eligible for the office” means the qualifications of members provided in [section 34-614, Idaho Code](#).

(6) “Individual” means a natural person and not an artificial person such as a corporation, partnership, or other entity created by law.

(7) “Legislature” means the Idaho senate or the Idaho house of representatives or both.

(8) “Office” means any senate member, house of representatives member, executive office holder, or all.

(9) “Parties” means the contestor and the contestee.

(10) “Party” means the contestor or the contestee.

(11) “Presiding officer” means the Idaho senate president pro tempore or the speaker of the Idaho house of representatives. In the event the contestee or the contestor is the presiding officer, then the next ranking member of majority leadership who is able and willing serves as presiding officer. In the event the contestee or the contestor is an office holder in the executive department, then both the Idaho senate president pro tempore and the speaker of the Idaho house of representatives will serve as presiding officers.

### **History.**

[I.C., § 34-2102](#), as added by 2017, ch. 293, § 2, p. 767.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 34-2102 was repealed. See Prior Laws, § 34-2101.

**34-2103. Jurisdiction — Contests over legislative offices — Contests over executive offices. —** (1) Contests over legislative offices.

(a) The senate will hear and determine contests of the election of its members.

(b) The house of representatives will hear and determine contests of the election of its members.

(2) Contests over executive offices. The legislature, in joint meeting, will hear and determine cases of contested election for all officers of the executive department. The meeting of the two (2) bodies to decide upon those elections will be held in the house of representatives, and the speaker of the house of representatives will preside.

**History.**

I.C., § 34-2103, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2103 was repealed. See Prior Laws, § 34-2101.

**34-2104. Grounds of contest.** — The election of any person to any legislative or state executive office may be contested:

(1) For misconduct, fraud or corruption as provided in [section 34-2107, Idaho Code](#), on the part of one (1) or more judges of election in any precinct or township, or on the part of one (1) or more members of any board of canvassers sufficient to change the result; (2) When, in an election contest regarding a legislative seat, the contestee was not eligible for the office at the time of the election as provided in [section 34-614, Idaho Code](#); (3) When, in an election contest regarding an executive office, the contestee was not eligible for the office at the time of the election as provided in chapter 6 of this title; (4) When the contestee has been convicted of one (1) or more felonies, unless at the time of the election his civil rights have been restored; (5) When the contestee has been charged with giving or offering to any elector, clerk, or canvasser of the election, or to any judge as provided in [section 34-2107, Idaho Code](#), any bribe or reward in money or property, for the purpose of procuring his election; (6) When the contestee has been charged with violating one (1) or more of the provisions found in [sections 18-2301 through 18-2313, Idaho Code](#); (7) When illegal votes have been received or legal votes rejected at the polls sufficient to change the result; (8) For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result; (9) When the contestee holds the office of the state treasurer or the state controller as provided in [section 1, article IV, of the constitution](#) of the state of Idaho, and is in default as a collector and custodian of public money or property; (10) For any other cause or allegation which, if sustained, would show that a person other than the contestee was the person duly elected to the office in question.

**History.**

[I.C., § 34-2104](#), as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Election contests in general, § 34-2001 et seq.

Usurpation of office, action for, § 6-602.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

### **Prior Laws.**

Former § 34-2104 was repealed. See Prior Laws, § 34-2101.

## **JUDICIAL DECISIONS**

### Analysis

Burden of proof.

Changed result.

Eligibility.

### **Burden of Proof.**

In order to overcome the prima facie effect of an election return, it is incumbent on the challenger to prove not only illegal votes, but also for whom they were cast. Both these elements of proof are required to show that the illegal votes affected the result, and that, but for them, appellant would have been elected. *Brannon v. City of Coeur d'Alene*, 153 Idaho 843, 292 P.3d 234 (2012).

### **Changed Result.**

A party contesting an election must initially prove that the number of illegal votes cast could have changed the result. *Hart v. Shepherd* (In re Contest of the Election for State Representative In Legislative District No. 7), 164 Idaho 102, 425 P.3d 1245 (2018).

### **Eligibility.**

Ineligibility of a candidate for office at the time of election because of holding another office, the term of which will expire before the beginning of the term of the office for which he is a candidate, is not ground for contest of such candidate's election. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

**34-2105. Legislative rules.** — In addition to the provisions of this chapter, the legislature may provide:

- (1) Senate rules regarding senate election contests.
- (2) House of representatives rules regarding house of representatives election contests.
- (3) Joint rules regarding executive department election contests.

In the event the provisions of this chapter are inconsistent with legislative rules, the legislative rules control.

**History.**

I.C., § 34-2105, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2105 was repealed. See Prior Laws, § 34-2101.

**JUDICIAL DECISIONS**

**Construction.**

Each house of the legislature is sole judge of the election and qualification of its members. *Burge v. Tibor*, 88 Idaho 149, 397 P.2d 235 (1964).

**34-2106. Contest for legislative offices — Exception regarding presiding officers.** — Notwithstanding the provisions of sections 34-2101 through 34-2119, Idaho Code, in the event a presiding officer occupies the legislative seat that is the subject of an election contest, the majority leader or the next available and willing member of majority leadership of the appropriate body must serve as the presiding officer for purposes of this chapter.

**History.**

I.C., § 34-2106, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2106 was repealed. See Prior Laws, § 34-2101.



**34-2107. Misconduct of election judges — When sufficient to set aside an election.** — Misconduct on the part of the judges of election is sufficient to set aside the election if the misconduct would change the result regarding that office.

**History.**

I.C., § 34-2107, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2107 was repealed. See Prior Laws, § 34-2101.

Another former § 34-2107, which comprised 1890-1891, p. 57, § 141; reen. 1899, p. 33, § 128; reen. R.C. & C.L., § 45; C.S., § 86; I.C.A., § 33-1807, was repealed by S.L. 1982, ch. 209, § 20, effective March 29, 1982.

**34-2108. Notice of contest — Legislative — Executive department — Grounds — Service — Anticipated discovery.** — (1) Legislative contest. Within twenty (20) days after the election, whenever any elector of a legislative district chooses to contest the election of any member of the legislature from that district, the elector must give written notice of the contest and leave a copy of the notice of contest with the office of the secretary of state. The elector must make reasonable efforts to provide written notice of the contest to:

- (a) The person whose election the elector is contesting by serving the notice at the address of the person reflected on his declaration of candidacy filed with the office of the secretary of state; and
- (b) The secretary of the senate, if the election contest concerns an Idaho senate seat, or the chief clerk of the house of representatives, if the election contest concerns an Idaho house of representatives seat, at the statehouse in Boise.

(2) Executive department contest. Within twenty (20) days after the election, whenever any elector of this state chooses to contest the validity of the election of any of the officers of the executive department of the state, the elector must give written notice of the contest and leave a copy of the notice of contest with the office of the secretary of state. The elector must make reasonable efforts to provide written notice of the contest to:

- (a) The person whose election the elector is contesting by serving the notice at the address that appears on the person's declaration of candidacy filed with the office of the secretary of state;
- (b) The chief clerk of the house of representatives and the secretary of the senate at the statehouse in Boise.

(3) Notification by secretary of state to legislature. On or before the first day of the legislature's organizational session, the secretary of state must provide a copy of the notice of election contest to:

- (a) The secretary of the senate, if the election contest concerns an Idaho senate seat;

(b) The chief clerk of the house of representatives, if the election contest concerns an Idaho house of representatives seat;

(c) The secretary of the senate and the chief clerk of the house of representatives, if the election contest concerns an officer of the executive department.

(4) Grounds for contest. For any contest of election provided for in subsection (1) or (2) of this section, the notice of contest of election must include one (1) or more grounds upon which the election will be contested, as provided in [section 34-2104, Idaho Code](#).

(5) Anticipated discovery. In the notice of contest, the parties must identify anticipated initial discovery, including witnesses to be deposed and the anticipated date and location of depositions. Relevant additional discovery will be allowed by the parties.

(6) Notice of contest may not be amended. A notice of contest required by this section may not be amended subsequent to the expiration of the twenty (20) days' notice required in subsections (1) and (2) of this section.

**History.**

[I.C., § 34-2108](#), as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2108 was repealed. See Prior Laws, § 34-2101.

**34-2109. Summary dismissal.** — (1) If the notice of contest fails to recite any grounds required by section 34-2104, Idaho Code, or fails to identify anticipated discovery as provided in section 34-2108, Idaho Code, or the contestor fails to timely post bond as provided in section 34-2118, Idaho Code, or the contestor otherwise fails to comply with the provisions of this chapter in a material way, the notice of contest may be stayed or dismissed as provided in subsections (3) and (4) of this section.

(2) Failure to advance contest. If the contestor fails to advance the contest due to death, incapacity, failure to comply with orders of the presiding officer, relocation out of the contested legislative district, or failure to advance the contest, then the presiding officer may enter a written order staying the proceedings. The provisions of subsections (3) and (4) of this section will then apply.

(3) Stay of proceedings. The presiding officer may enter a written order staying the proceedings if any of the instances provided in subsection (1) or (2) of this section apply. Upon issuance of the order, discovery in the contest must cease. The order must state the basis for the stay.

(4) Ratification or rejection. On or after the second day of the next regular session of the legislature, the body must either accept or reject the presiding officer's stay.

(a) A vote by the body to accept the order constitutes a dismissal of the contest.

(b) A vote by the body to reject the order constitutes a reversal of the order. Following the rejection of the order, the presiding officer or his designee must issue an order to the parties providing a schedule for reasonable discovery and hearing. The order must provide reasonable time for the parties to develop their record, not to exceed twenty (20) days. The order must define how and when the record must be completed and delivered to the office of the secretary of state and when the secretary of state will deliver the contest papers to the appropriate body.

### **History.**

I.C., § 34-2109, as added by 2017, ch. 293, § 2, p. 767.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-2109 was repealed. See Prior Laws, § 34-2101.

**34-2110. Examination of witnesses — Subpoenas.** — Unless otherwise provided for in legislative rule, the following provisions apply:

(1) Examination of witnesses. Unless otherwise ordered by the presiding officer or his designee, any party may take the testimony of any person by deposition upon oral examination pursuant to the provisions of the Idaho rules of civil procedure. Depositions must be transcribed in writing. Any other form of deposition must be approved by the presiding officer or his designee. All testimony and discovery must be completed on or before December 29 following the election. The completed record must be delivered to the office of the secretary of state no later than the close of business on the next business day following December 29.

(2)(a) Subpoenas and subpoenas duces tecum. An election contest held pursuant to the provisions of this chapter is not a judicial proceeding. The principles of **rule 45 of the Idaho rules of civil procedure**, however, must be used as a framework for the form, content, issuance and service of subpoenas. Every subpoena and subpoena duces tecum must reasonably approximate the form found in appendix B of the Idaho rules of civil procedure.

(b) Unless prevented by sickness or unavoidable necessity, any person who has been summoned in the manner provided for in this section and refuses or neglects to attend and testify: (i) Forfeits the sum of twenty dollars (\$20.00), to be recovered by the party at whose instance the subpoena was issued; and (ii) Is guilty of a misdemeanor.

(c) Every witness who provides testimony pursuant to a subpoena provided for in this chapter is entitled to receive the witness fees as allowed under the Idaho rules of civil procedure.

### **History.**

**I.C., § 34-2110**, as added by 2017, ch. 293, § 2, p. 767.

## **STATUTORY NOTES**

### **Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2110 was repealed. See Prior Laws, § 34-2101.

**34-2111. Testimony — How taken, certified and preserved.** — The testimony by deposition upon oral examination must be taken and preserved pursuant to the provisions of the Idaho rules of civil procedure. The deposition record must be entitled: “Deposition taken in the matter of the contest of the election of [INSERT NAME OF CONTESTEE HERE] to the office of . . . .,” and be directed to the secretary of state, who must preserve the same, until the meeting of the legislature. Any testimony taken pursuant to this section must be filed with the secretary of state. Upon request of a presiding officer, the secretary of state must provide copies of depositions to the requesting presiding officer in a timely manner, prior to the time established in section 34-2114, Idaho Code.

**History.**

I.C., § 34-2111, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2111 was repealed. See Prior Laws, § 34-2101.



**34-2112. Production of papers — Refusal or neglect to produce a misdemeanor.** — The presiding officer has power to require the production of papers. Any person who refuses or neglects to produce and deliver any paper or papers in his possession pertaining to the election or, in case they be official papers, refuses or neglects to produce and deliver certified or sworn copies of the same shall be guilty of a misdemeanor.

**History.**

I.C., § 34-2112, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**Prior Laws.**

Former § 34-2112 was repealed. See Prior Laws, § 34-2101.

**34-2113. Examination of poll books and ballots.** — (1) Except as provided in subsection (2) of this section, if, at the time of taking depositions to be used in a contested election, the notice of contest alleges that it is necessary for the determination of the contest that the ballots or the poll books of any election district or districts should be inspected, then, on the request of either party to the contest, the presiding officer may issue an order requiring the county auditor, or other person in whose custody or possession the ballots or poll books may be, naming the district or districts mentioned in the notice, to deliver them to the person or persons issuing the order. The officer or officers must transmit the ballots or poll books to the secretary of state, who must preserve the same unopened until the meeting of the legislature.

(2) Any order issued pursuant to subsection (1) of this section must not be executed until after the time has lapsed for the filing of: (a) An election contest provided for in chapter 20 of this title; or (b) A recount filed as provided for in chapter 23 of this title.

(c)(i) If more than one (1) election contest is filed pursuant to chapter 20 or 21 of this title that implicate the same ballots or poll books, or part of the same ballots or poll books, the office of the secretary of state and the appropriate county auditor, or other person in whose custody or possession the ballots or poll books may be, must agree to a process for the examination of ballots or poll books that reasonably accommodates each contest filed.

(ii) If one (1) or more election contests are filed pursuant to chapter 20 or 21 of this title and one (1) or more recounts of ballots are filed pursuant to chapter 23 of this title, and if the election contests and the recounts of ballots implicate the same ballots or poll books, or part of the same ballots or poll books, the office of the secretary of state, the office of the attorney general and the appropriate county auditor or other person in whose custody or possession the ballots or poll books may be must agree to a process for the examination of ballots or poll books that reasonably accommodates each contest filed and each recount of ballots filed.

**History.**

I.C., § 34-2113, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2113 was repealed. See Prior Laws, § 34-2101.

**34-2114. Contest papers delivered to presiding officers.** — (1) Senate election contests. On the second day of the next regular session of the legislature, the secretary of state must deliver to the presiding officer of the senate all papers regarding a contested election of any member of the senate.

(2) House of representatives election contests. On the second day of the next regular session of the legislature, the secretary of state must deliver to the presiding officer of the house of representatives all papers regarding a contested election of any member of the house of representatives.

(3) Executive department election contests. On the second day of the next regular session of the legislature, the secretary of state must deliver to the speaker of the house of representatives all papers regarding a contest of elections of executive officers. The senate president pro tempore, or his designee, must attend the house of representatives during its receipt of the contest papers.

**History.**

I.C., § 34-2114, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2114 was repealed. See Prior Laws, § 34-2101.

**34-2115. Notice of receiving papers.** — (1) Senate election contest. On the day of the receipt by the presiding officer of the senate, or his designee, of papers relating to contested elections, the presiding officer, in the appropriate order of business, must give notice to the senate of receipt of the papers.

(2) House of representatives election contest. On the day of the receipt by the presiding officer of the house of representatives, or his designee, of papers relating to contested elections, the presiding officer, in the appropriate order of business, must give notice to the house of representatives of receipt of the papers.

(3) State Executive Department Election Contest. Where the papers relate to the contest of a state executive officer, the house of representatives must notify the senate, and the day must be fixed by both houses, by concurrent resolution, for uniting the two (2) bodies to decide upon the same, in which decision the yeas and nays must be taken and entered upon the journal. A joint committee may be appointed by the presiding officers, or designees, of the two (2) bodies to produce a committee report on the election contest.

**History.**

I.C., § 34-2115, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2115 was repealed. See Prior Laws, § 34-2101.

**34-2116. Opening and custody of papers — Appointment of committee.** — (1) Unless otherwise provided by legislative rule, the papers relating to any contest of election must be opened only in the presence of the body as directed by the presiding officer. Except as provided in subsection (2) of this section or unless otherwise provided for by legislative rule, the papers must remain in the custody of the presiding officer or his designee until the election contest is decided. Upon a final decision by the body, the provisions of section 34-2117, Idaho Code, governing preservation of evidence will apply.

(2) Appointment of committee. The presiding officer may appoint a standing or special committee to hear the contest of election.

(a) The chairman of the committee will act as the temporary custodian of the papers. The presiding officer, or his designee, has discretion to deliver to the committee chairman all papers delivered to the presiding officer by the secretary of state or a portion of those papers. The committee chairman, or his designee, is authorized to efficiently manage or organize the papers.

(b) Upon conclusion of hearing the contest, the committee will report to the body its recommendation on the contest. The body must vote on the committee report. Upon the body's vote on the report, the committee chairman must return the papers to the presiding officer, who will preserve the evidence as provided in [section 34-2117, Idaho Code](#).

### **History.**

[I.C., § 34-2116](#), as added by 2017, ch. 293, § 2, p. 767.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-2116 was repealed. See Prior Laws, § 34-2101.

**34-2117. Preservation of evidence.** — (1) Except as provided for in subsection (2) of this section, all the evidence in any contest provided for in this chapter will be returned by the presiding officer, or his designee, to the secretary of state and will be preserved in the office of the secretary of state.

(2) Any ballots or poll books, other than copies, will be returned by the presiding officer to the secretary of state, who will return them to the office of the county auditor in which they were first required to be filed.

**History.**

I.C., § 34-2117, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2117 was repealed. See Prior Laws, § 34-2101.

**34-2118. Security for costs — Assessment of costs and fees — Assessment of attorney's fees.** — (1) The contestor must file with the secretary of state a bond in the amount of one thousand dollars (\$1,000) conditioned to pay the contestee's costs if the election be confirmed by the legislature.

(2) The parties are liable for witness fees and the costs of discovery made by them respectively. If the election is upheld by the legislature, the legislature may assess costs and fees, other than attorney's fees, against the contestor. If the election is annulled by the legislature, the legislature may assess costs and fees, other than attorney's fees, against the contestee.

(3) Attorney's fees.

(a) Attorney's fees may be awarded against the contestor if the legislature determines the contest of election is frivolous and has no foundation in law or fact.

(b) Attorney's fees may be awarded against the contestee if the election is annulled by the legislature due to misconduct, fraud or corruption on the part of the contestee.

(4) If the election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the returns, the contest costs will be a charge against the county in which the fraud or error occurred.

(5) If a special election is called by the legislature pursuant to [section 34-2119, Idaho Code](#), the costs associated with the special election will be allocated in equal amounts to the state of Idaho and the county or counties where the special election is held.

### **History.**

[I.C., § 34-2118](#), as added by 2017, ch. 293, § 2, p. 767.

## **STATUTORY NOTES**

### **Cross References.**



Fees of officers, § 31-3201 et seq.

Liability for costs of contesting election for other office, § 34-2020.

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-2118 was repealed. See Prior Laws, § 34-2101.

## **JUDICIAL DECISIONS**

### **Attorney's Fees.**

Prior to the 2017 revision of the election law, attorney's fees could be awarded against a contestor of an election. [Nye v. Katsilometes, 165 Idaho 455, 447 P.3d 903 \(2019\)](#).

**34-2119. Forms of relief.** — (1) The legislature must confirm or annul the election and must declare as elected the person who appears duly elected.

(2) If two (2) or more persons have the highest and an equal number of votes for the same office, or if the legal ballots cast or intended to be cast for them had been counted and they would have had the highest and an equal number of votes for the same office, then the election will be decided by lot, in a manner directed by the legislature, which of the persons receiving such votes will be declared duly elected.

(3) When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes will not be declared elected and the legislature must declare the election void.

(4) If a vacancy is created pursuant to this section, the legislature may declare the office vacant and order the office filled pursuant to chapter 9, title 59, Idaho Code.

(5) Notwithstanding the provisions of chapter 1 of this title, the legislature may call for a special election regarding a specific contested office in which an accurate vote count cannot be obtained or discovered by the legislature. The legislature has the authority to set the date of the special election and the office and candidates to be placed on the ballot. In setting a special election, the legislature may provide for a filing period and notice provisions for the election.

(6)(a) Upon a final decision and award of costs and fees against the contestor, the legislature may direct the secretary of state to pay the award from the bond provided in [section 34-2118, Idaho Code](#).

(b) Upon a final decision and award of costs, fees or attorney's fees against the contestor, and if the costs, fees and attorney's fees exceed the amount of the bond filed pursuant to [section 34-2118, Idaho Code](#), the contestee may petition the district court for execution of the award.

(c) Upon a final decision and award of costs and fees against the contestee, the contestor may petition the district court for execution of the award.

**History.**

I.C., § 34-2119, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2119 was repealed. See Prior Laws, § 34-2101.

**34-2120. Contest of nomination at primaries.** — Any candidate at a primary election may contest the nomination of any candidate for the same office based on the grounds as set out in this chapter.

**History.**

I.C., § 34-2120, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2120 was repealed. See Prior Laws, § 34-2101.

**34-2121. Jurisdiction over primary contests.** — A district court in the respective legislative district has jurisdiction over the primary contest involving a legislative election. For election contests involving statewide executive offices, the district court whose jurisdiction includes the state capitol has jurisdiction.

**History.**

I.C., § 34-2121, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Jurisdiction over primary contest of other office, § 34-2029.

**Prior Laws.**

Former § 34-2121 was repealed. See Prior Laws, § 34-2101.

**34-2122. Filing of affidavit.** — A candidate wishing to contest a primary election must file an affidavit with the appropriate court within five (5) days of the completion of the canvass of the election. The affidavit must set forth information as required in section 34-2108, Idaho Code, and must be served on all necessary parties in the same manner as a complaint and summons are served pursuant to the Idaho rules of civil procedure.

**History.**

I.C., § 34-2122, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Filing of affidavit, other offices, § 34-2030.

**Prior Laws.**

Former § 34-2122 was repealed. See Prior Laws, § 34-2101.

**RESEARCH REFERENCES**

**A.L.R.** — Validity, construction and application of state statutory limitations periods governing election contests. 60 A.L.R.6th 481.

**34-2123. Security for costs.** — Upon filing of the affidavit, the contestor must file with the court a bond in the amount of one thousand dollars (\$1,000) to be used to pay costs of the contestee in the event the primary election be confirmed or the prosecution fail.

**History.**

I.C., § 34-2123, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Security for costs, contests of other offices, § 34-2031.

**Prior Laws.**

Former § 34-2123 was repealed. See Prior Laws, § 34-2101.

**34-2124. Fraud or error by the election official.** — If the primary election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the election returns, the court costs must be a charge against the state of Idaho.

**History.**

I.C., § 34-2124, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Fraud or error by election official, other offices, § 34-2032.

**Prior Laws.**

Former § 34-2124 was repealed. See Prior Laws, § 34-2101.



**34-2125. Discovery.** — The court may order the production of such evidence as it deems necessary for the proper disposition of the primary contest pursuant to the Idaho rules of civil procedure. The election contest must be given priority on the court's calendar.

**History.**

I.C., § 34-2125, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Discovery in primary contests of other offices, § 34-2033.

**Prior Laws.**

Former § 34-2125 was repealed. See Prior Laws, § 34-2101.

**34-2126. Remedies.** — Not more than ten (10) days after the hearing, the court must render an opinion in a primary contest as soon as practicable and must prescribe such remedies provided in this chapter as it deems just. The court may award attorney's fees if the court finds the contest of nomination is frivolous and has no foundation in law or fact.

**History.**

I.C., § 34-2126, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Remedies in primary contest of other offices, § 34-2034.

**Prior Laws.**

Former § 34-2126 was repealed. See Prior Laws, § 34-2101.

**34-2127. Appeals.** — (1) In primary election contests, the party against whom judgment is rendered on cases filed in the district court may appeal to the supreme court. The appeal must be taken within ten (10) days of the judgment of the district court.

(2) The supreme court must give the primary contest appeal priority and in no case may it render a decision more than ten (10) days after the receipt of an appeal.

(3) The supreme court may award attorney's fees if it finds the appeal is frivolous and has no foundation in law or fact.

**History.**

I.C., § 34-2127, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Appeals, contests of other offices, § 34-2035.

**Prior Laws.**

Former § 34-2127 was repealed. See Prior Laws, § 34-2101.

**JUDICIAL DECISIONS**

**Attorney's Fees.**

Secretary of state was entitled to attorney's fees, because, although the irregularities in the election certainly justified the candidate's initial challenge before the district court, his appeal was frivolous, inasmuch as he made no effort to present evidence to the district court in support of his claim that the irregularities warranted relief. *Hart v. Shepherd (In re Contest of the Election for State Representative In Legislative District No. 7)*, 164 Idaho 102, 425 P.3d 1245 (2018).

**34-2128. Cost on appeal.** — The appellant must file a bond sufficient to cover the cost of appeal of a primary contest. The amount of the bond on appeal must be set by the court.

**History.**

I.C., § 34-2128, as added by 2017, ch. 293, § 2, p. 767.

**STATUTORY NOTES**

**Cross References.**

Costs on appeal, contests of other offices, § 34-2036.

**Prior Laws.**

Former § 34-2128 was repealed. See Prior Laws, § 34-2101.



## **CHAPTER 22**

### **CONSTITUTIONAL CONVENTION ACT**

#### **Section.**

34-2201. Election of delegates.

34-2202. Qualifications of voters.

34-2203. Ascertainment and certification of results — General election laws applicable.

34-2204. Number of delegates.

34-2205. Qualifications of delegates — Nominating petitions — Declarations of candidates and signers — Certification.

34-2206. Ballots.

34-2207. Result of election — Vacancies, how filled.

34-2208. Meeting and organization of delegates.

34-2209. Organizational powers of convention.

34-2210. Journal of proceedings.

34-2211. Certificate of ratification.

34-2212. No compensation — Expenses, how allowed.

34-2213. Expenses, how paid.

34-2214. Federal statute to control.

34-2215. Separability.

34-2216. Short title.

34-2217. Referendum on United States constitutional amendment — Advisory nature. [Repealed.]

**34-2201. Election of delegates.** — Whenever the Congress of the United States has proposed, or shall hereafter propose, an amendment to the Constitution of the United States, and proposes that it be ratified by conventions in the several states, the governor shall fix by proclamation the date of an election, subject to the provisions of section 34-106, Idaho Code, for the purpose of electing delegates to such convention in the state of Idaho. The proclamation for such election shall be issued by the governor under his hand and the great seal of the state of Idaho at least ninety (90) days before such election and copies thereof shall be transmitted to the board of county commissioners of the counties in which such elections are to be held. Such election shall be held at least as soon as the next general election occurring more than three (3) months after the amendment has been proposed by the Congress of the United States.

**History.**

1933, ch. 179, § 1, p. 328; am. 1995, ch. 118, § 47, p. 715.

**STATUTORY NOTES**

**Cross References.**

General elections, time of holding, § 34-601.

**34-2202. Qualifications of voters.** — At such election all persons qualified to vote for presidential electors shall be entitled to vote.

**History.**

1933, ch. 179, § 2, p. 328.

**STATUTORY NOTES**

**Cross References.**

Qualifications of voters, § 34-401 et seq.



**34-2203. Ascertainment and certification of results — General election laws applicable.** — Except as in this act otherwise provided, such election shall be conducted and the results thereof ascertained and certified in the same manner as in the case of the election of presidential electors in this state, and all the provisions of the laws of this state relative to general elections, except in so far as inconsistent with sections 34-2201 — 34-2216[, Idaho Code], are hereby made applicable to such election.

**History.**

1933, ch. 179, § 3, p. 328.

**STATUTORY NOTES**

**Cross References.**

Canvassing of returns, § 34-1201.

Conduct of elections, § 34-1101 et seq.

Presidential electors, § 34-1501 et seq.

**Compiler's Notes.**

The term “this act”, near the beginning of this section, refers to S.L. 1933, Chapter 179, which is codified as §§ 34-2201 to 34-2216. The reference probably should be to “this chapter,” being chapter 22, title 34, Idaho Code.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**34-2204. Number of delegates.** — The number of delegates to be chosen to such convention shall be twenty-one (21), to be elected from the state at large.

**History.**

1933, ch. 179, § 4, p. 328.

**34-2205. Qualifications of delegates — Nominating petitions — Declarations of candidates and signers — Certification.** — Candidates for the office of delegate to the convention shall be qualified electors of the state of Idaho. Nomination shall be by petition and not otherwise. A single petition shall nominate but one (1) candidate, who may have one (1) or more separate petitions. Nominations shall be without party or political designation, but the nominating petitions shall each contain a declaration of the candidate that he is a candidate for election to the office of delegate to the constitutional convention, and a statement to the effect that he favors ratification of, or that he is against ratification of the proposed constitutional amendment to be acted upon by the constitutional convention, and the total number of voters joining in the nomination of a candidate shall not be less than one hundred (100).

The candidate's declaration in the nominating petition shall be in substantially the following form, to-wit: I, the undersigned, being a qualified elector of .... precinct, .... County, State of Idaho, hereby declare myself to be a candidate for the office of delegate to the constitutional convention, to be voted for at the election to be held on the .... day of ....., ....., and that I .... (insert one only of the following: "favor ratification of" .... or "am against ratification of") the proposed constitutional amendment to be acted upon by the constitutional convention, and certify that I possess the legal qualifications to fill said office, and that my post-office address is .....

I further certify and declare that if nominated I hereby accept said office.

(Signed) .....

All blank spaces shall be properly filled in with the necessary information and the declaration of candidacy shall be subscribed and sworn to before an officer authorized to administer oaths, and the signatures of the voters joining in such petitions, each of which signature shall be followed by the signer's residence address and date, shall be prefaced by a declaration in substantially the following form, to-wit: I, the undersigned, being a qualified elector of the State of Idaho, do hereby declare that I am in accord with the statement and declaration of ....., a candidate for the office of delegate to the constitutional convention, to be voted for at the election to

be held on the .... day of ...., ...., and do hereby join in this petition for his nomination for such office.

**Name of Petitioner**

.....

**Post office**

.....

**Date of Signing**

.....

Each nominating petition shall, at the time of filing in the office of the secretary of state, bear an affidavit in substantially the following form, executed and verified by a citizen and resident of the State of Idaho:

State of Idaho  
ss.  
County of ....

I do solemnly swear (or affirm) that I am a citizen and resident of the State of Idaho; that each of the petitioners whose name is affixed to the above paper signed the same personally, together with his post-office address and date of signing, and that each signed the same with full knowledge of its contents; that to the best of my knowledge each is a qualified elector of the State of Idaho.

(Signed) .....

Subscribed and sworn to before me this .... day of ...., ....

.....  
Notary Public for the State of  
Idaho; residence .....

No voter shall sign more than twenty-one (21) nominating petitions nor more than one (1) petition for the same candidate, and if he does either, his signatures shall not be counted on any nominating petition.

All acceptances and petitions shall be filed with the secretary of state not less than forty-five (45) days before the date fixed for the election. No nomination shall be effective except those of the twenty-one (21) candidates in favor of ratification and the twenty-one (21) candidates against ratification whose nominating petitions have respectively been signed by the largest number of voters, ties, if any, to be decided by lot drawn by the secretary of state; provided, however, that if there be less than twenty-one (21) candidates in favor of ratification, all such candidates shall be considered as nominated, or if there be less than twenty-one (21) candidates against ratification all such candidates shall be considered as nominated.

Within ten (10) days after the petitions are filed with him, the secretary of state shall certify to each county auditor within the state, a certified list of

the candidates of each group entitled to be voted for at such election, as appears from the acceptances and nominating petitions filed in the office of the secretary of state.

**History.**

1933, ch. 179, § 5, p. 328; am. 2007, ch. 90, § 17, p. 246.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2007 amendment, by ch. 90, deleted references to the twentieth century in the date lines in the form.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**34-2206. Ballots.** — The election shall be by ballot, separate from any ballot to be used at the same election, which ballot shall be prepared as follows: It shall first state the substance of the proposed constitutional amendment. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width headed respectively, in plain type, “For Ratification” and “Against Ratification.” In the column headed “For Ratification” shall be placed the names of the candidates nominated in favor of ratification. In the column headed “Against Ratification” shall be placed the names of the candidates nominated as against ratification. The voter shall indicate his choice by making one or more cross-marks in the appropriate spaces provided on the ballot. No ballot shall be held void because any such cross-mark is irregular in character. The ballot shall be so arranged that the voter may, by making a single cross-mark, vote for the entire group of candidates whose names are comprised in any column:

The ballot shall be in substantially the following form: PROPOSED  
AMENDMENT TO THE CONSTITUTION  
OF THE UNITED STATES

Delegates to the Convention to Ratify the  
Proposed Amendment.

The Congress has proposed an amendment to the Constitution of the United States which provides (insert here the substance of the proposed amendment).

The Congress has also proposed that the said amendment shall be ratified by conventions in the several states.



#### INSTRUCTIONS TO VOTERS

Do not vote for more than 21 candidates altogether.

To vote for all candidates in favor of ratification, or for all candidates against ratification, make a cross-mark in the CIRCLE at the head of the list of candidates for whom you wish to vote. If you do this, make no other mark.

To vote for an individual candidate make a cross-mark in the SQUARE at the left of the name.

---

FOR RATIFICATION	AGAINST RATIFICATION
	
<input data-bbox="328 548 373 594" type="checkbox"/> John Doe	<input data-bbox="831 548 876 594" type="checkbox"/> Charles Coe
<input data-bbox="328 604 373 651" type="checkbox"/> Richard Roe	<input data-bbox="831 604 876 651" type="checkbox"/> Michael Moe

---

All circular spaces in said ballot shall be one-half ( $\frac{1}{2}$ ) inch in diameter.

All square spaces in said ballot shall be one-half ( $\frac{1}{2}$ ) inch square.

Except as herein otherwise provided, ballots and supplies for said election shall be prepared and furnished as provided by chapter 9 of this title.

**History.**

1933, ch. 179, § 6, p. 328.

**34-2207. Result of election — Vacancies, how filled.** — The twenty-one (21) candidates who shall receive respectively the highest numbers of the total number of votes cast at said election shall be the delegates to the convention. If there shall be a vacancy in the convention caused by the death or disability of any delegate or any other cause, the same shall be filled by appointment by the majority vote of the delegates comprising the group from which such delegate was elected and if the convention contains no other delegate of that group, shall be filled by the governor.

**History.**

1933, ch. 179, § 7, p. 328.



**34-2208. Meeting and organization of delegates.** — The delegates to the convention shall meet and assemble in the house of representatives in the capitol at Boise, Idaho, on the twenty-eighth day after their election, at twelve (12) o'clock noon, and shall thereupon organize as, be and constitute a convention to pass upon the question of whether or not the proposed amendment shall be ratified.

**History.**

1933, ch. 179, § 8, p. 328.

**34-2209. Organizational powers of convention.** — The convention shall be the judge of the election and qualification of its members; and shall have the power to elect its president, secretary and other officers and/or employees and to adopt its own rules.

**History.**

1933, ch. 179, § 9, p. 328.

**34-2210. Journal of proceedings.** — The convention shall keep a journal of its proceedings in which shall be recorded the vote of each delegate on the question of ratification of the proposed amendment. Upon final adjournment the journal shall be certified to by the president and secretary of the convention and be filed with the secretary of state.

**History.**

1933, ch. 179, § 10, p. 328.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**34-2211. Certificate of ratification.** — If the convention shall agree, by a vote of a majority of the total number of delegates, to the ratification of the proposed amendment, a certificate to that effect shall be executed by the president and secretary of the convention and transmitted to the secretary of state of this state, who shall transmit the certificate under the great seal of the state to the secretary of state of the United States.

**History.**

1933, ch. 179, § 11, p. 328.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**34-2212. No compensation — Expenses, how allowed.** — No delegate to a constitutional convention shall receive any compensation except that such delegate shall be paid his actual, necessary and reasonable expenses in traveling to and from and attendance at said convention.

**History.**

1933, ch. 179, § 12, p. 328.

**34-2213. Expenses, how paid.** — All the expenses of the constitutional convention and the expenses allowed delegates thereto shall be allowed and paid by the state of Idaho in the same manner as other claims against the state are allowed and paid, and from such appropriations as are, or may be, available therefor.

**History.**

1933, ch. 179, § 13, p. 328.

**34-2214. Federal statute to control.** — If at or about the time of submitting any such amendment, Congress shall either in the resolution submitting the same or by statute, prescribe the manner in which the conventions shall be constituted, and shall not except from the provisions of such statute or resolution such states as may theretofore have provided for constituting such conventions, the preceding provisions of this act shall be inoperative, the convention shall be constituted and shall operate as the said resolution or Act of Congress shall direct, and all officers of the state who may by the said resolution or statute be authorized or directed to take any action to constitute such a convention for this state are hereby authorized and directed to act thereunder and in obedience thereto with the same force and effect as if acting under a statute of this state.

**History.**

1933, ch. 179, § 14, p. 328.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the middle of this section refers to S.L. 1933, Chapter 179, which is codified as §§ 34-2201 to 34-2216. The reference probably should be to “this chapter,” being chapter 22, title 34, Idaho Code.

**34-2215. Separability.** — If any part or parts of sections 34-2201 — 34-2216[, Idaho Code,] shall be adjudged by the courts to be unconstitutional or invalid, the same shall not effect the validity of any part or parts thereof which can be given effect without the part or parts adjudged to be unconstitutional or invalid. The legislature hereby declares that it would have passed the remaining parts of sections 34-2201 — 34-2216[, Idaho Code,] if it had been known that such other part or parts thereof would be declared to be unconstitutional or invalid.

**History.**

1933, ch. 179, § 15, p. 328.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions near the beginning and near the end of this section were added by the compiler to conform to the statutory citation style.



**34-2216. Short title.** — This act, sections 34-2201 — 34-2216[, Idaho Code], may be cited as the “Constitutional Convention Act.”

**History.**

1933, ch. 179, § 16, p. 328.

**STATUTORY NOTES**

**Compiler’s Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**34-2217. Referendum on United States constitutional amendment —  
Advisory nature. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1975, ch. 125, § 1, p. 258; am. 1979, ch. 249, § 1, p. 654, was repealed by S.L. 1995, ch. 227, § 1, effective March 20, 1995.



## **CHAPTER 23**

### **RECOUNT OF BALLOTS**

#### **Section.**

34-2301. Application for recount of ballots.

34-2302. Precincts specified for recount — Remittance.

34-2303. Ballots ordered impounded by attorney general.

34-2304. Order for recount — Procedure — Notice.

34-2305. Manner of recounting.

34-2306. Difference revealed by recount — Candidate relieved of costs.

34-2307. When general recount ordered.

34-2308. Candidate disagreeing with recount results — Appeal.

34-2309. Free recount.

34-2310. “Costs” defined.

34-2311, 34-2312. [Reserved.]

34-2313. Recount procedures for automated tabulation systems.

**34-2301. Application for recount of ballots.** — (1) Any candidate for federal, state, county or municipal office desiring a recount of the ballots cast in any nominating or general election or person supporting or opposing a state, county or city measure, may apply to the attorney general therefor, within twenty (20) days of the canvass of such election, by the state board of canvassers if for federal and state office, or within twenty (20) days of the canvass of such election by the county commissioners if for a county or municipal office.

(2) Candidates for all other offices and supporters and opponents to all other ballot measures desiring a recount may apply to the county clerk within twenty (20) days of the canvass of said election by the board of county commissioners.

**History.**

1957, ch. 198, § 1, p. 410; am. 1985, ch. 41, § 1, p. 84; am. 2009, ch. 341, § 64, p. 993; am. 2011, ch. 285, § 15, p. 778.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

State board of canvassers, § 34-1211.

**Amendments.**

The 2009 amendment, by ch. 341, twice inserted “or municipal.”

The 2011 amendment, by ch. 285, designated the existing provisions as subsection (1), inserted “or person supporting or opposing a state, county or city measure” in subsection (1), and added subsection (2).

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

**34-2302. Precincts specified for recount — Remittance.** — In his application he shall state the precinct or precincts in which he desires recount to be made and shall remit to the attorney general or county clerk, pursuant to section 34-2301, Idaho Code, together with his application the sum of one hundred dollars (\$100) for each such precinct in which he desires a recount made.

**History.**

1957, ch. 198, § 2, p. 410; am. 2011, ch. 285, § 16, p. 778.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Amendments.**

The 2011 amendment, by ch. 285, inserted “or county clerk, pursuant to [section 34-2301, Idaho Code](#).”

**Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

**34-2303. Ballots ordered impounded by attorney general.** — Upon receiving the application for recount together with the remittance required by section 34-2302, Idaho Code, the attorney general or county clerk, pursuant to section 34-2301, Idaho Code, shall cause all ballot boxes used in such election in the precinct or precincts in which recount is to be made to be immediately impounded and taken into custody by the sheriff of the county or counties in which precinct or precincts are located. In the event that the recount is of the results of a primary election the ballot boxes used to hold the blank half of the ballot shall also be impounded.

**History.**

1957, ch. 198, § 3, p. 410; am. 2011, ch. 285, § 17, p. 778.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Amendments.**

The 2011 amendment, by ch. 285, substituted “[section 34-2302, Idaho Code](#)” for “the preceding section” and inserted “or county clerk, pursuant to [section 34-2301, Idaho Code](#).”

**Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.



**34-2304. Order for recount — Procedure — Notice.** — The attorney general or county clerk shall then issue an order for recount. The order shall name the prior election judges and clerks of the precinct to act in the same capacity and receive the same compensation as they did on election day. The order shall provide for the place where the recount is to be made; that all candidates named on the ballot for the office contested, or a representative of either or all of them, may be present to watch the counting; and that every other person interested may be present. The order shall state the date on which the recount is to be made which shall not be more than ten (10) days from the date of the order. Copies of the order shall be mailed to each candidate named on the ballot for the office to be recounted.

**History.**

1957, ch. 198, § 4, p. 410; am. 1985, ch. 41, § 2, p. 84; am. 2011, ch. 285, § 18, p. 778.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Amendments.**

The 2011 amendment, by ch. 285, inserted “or county clerk” in the first sentence.

**Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

**34-2305. Manner of recounting.** — At the time and place fixed for recounting the ballots cast in any precinct all ballots shall be recounted in plain view of the candidates or their representatives. The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results tabulated. The attorney general shall be the final authority concerning any question which arises during the recount for federal, state, county or municipal elections. The county prosecuting attorney shall be the final authority concerning any question that arises during the recount of other elections.

**History.**

1957, ch. 198, § 5, p. 410; am. 1985, ch. 41, § 3, p. 84; am. 2011, ch. 285, § 19, p. 778; am. 2012, ch. 211, § 10, p. 571.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Amendments.**

The 2011 amendment, by ch. 285, deleted the former third sentence, which read: “The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results tabulated.”; and added “for federal, state, county and municipal elections” to the end of the current third sentence; and added the fourth sentence.

The 2012 amendment, by ch. 211, deleted “and if the recount is of a primary election the blank ballots shall be counted against the ballots that were voted” from the end of the first sentence.

**Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

**34-2306. Difference revealed by recount — Candidate relieved of costs.** — If the results of the recount indicate a difference, which if projected across all the precincts of the office in question would change the result of the election in favor of the candidate requesting the recount or change in the measure being recounted, then the cost of such recount shall be borne by the county or state and the sums of money theretofore paid for the recount shall be returned to the candidate or person who requested the recount of a ballot measure.

In order to be relieved of the costs of the recount, the candidate or person must request that at least twenty (20) precincts containing not less than five thousand (5,000) votes cast be recounted if for a federal or state office or measure, or five (5) precincts containing not less than one thousand two hundred fifty (1,250) votes cast be recounted for a state legislative district office, or at least two (2) precincts having not less than five hundred (500) votes cast be recounted for a county office or measure, or two (2) precincts having not less than two hundred (200) votes cast to be recounted in city or district elections.

### **History.**

1957, ch. 198, § 6, p. 410; am. 1985, ch. 41, § 4, p. 84; am. 2011, ch. 285, § 20, p. 778.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 285, in the first paragraph, inserted “or change in the measure being recounted” and “or person who requested the recount of a ballot measure”; in the second paragraph, inserted “or person” following “candidate”, “or measure” following “state office”, and “at least” preceding “two (2) precincts”, and added “or measure, or two (2) precincts having not less than two hundred (200) votes cast to be recounted in the city or district elections” at the end.

### **Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

**34-2307. When general recount ordered.** — If the candidate or person who requested the recount is relieved of the costs of the recount as described in section 34-2306, Idaho Code, the attorney general, or the county prosecuting attorney for district offices, shall require a recount to be made in all the remaining precincts of the office in question. The state shall pay for a general recount of a federal, state, or legislative district office, while the county shall pay for a general recount of a county, city or district office.

**History.**

**I.C., § 34-2307**, as added by 1985, ch. 41, § 6, p. 84; am. 2011, ch. 285, § 21, p. 778; am. 2012, ch. 211, § 11, p. 571.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**Prior Laws.**

Former § 34-2307, which comprised 1957, ch. 198, § 7, p. 410, was repealed by S.L. 1985, ch. 41, § 5.

**Amendments.**

The 2011 amendment, by ch. 285, inserted, “or person” following “candidate” near the beginning of the paragraph and inserted “city or district” preceding “office” at the end of the paragraph.

The 2012 amendment, by ch. 211, inserted “or the county prosecuting attorney for district offices” in the first sentence.

**Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

**34-2308. Candidate disagreeing with recount results — Appeal. —**

(1) Any candidate or person may appeal the results of a recount or the determination that a recount is not necessary when:

(a) Any candidate for the office or the person on either side of a measure for which a recount has been requested disagrees with the results of the recount and alleges that the law has been misinterpreted or misapplied;

(b) It appears that a different application or interpretation of the law would have required a general recount where no general recount was ordered; or

(c) It appears that a different application or interpretation of the law would not have required a general recount where a general recount was ordered;

then the candidate claiming the misinterpretation or the misapplication of law may appeal to the district court in the county concerned if the office is a county, municipal or district office or to the district court in Ada county if the office is a federal or state office.

(2) The submittal on appeal shall be by brief and submitted within twenty-four (24) hours following the recount. The appeal submittal shall be served upon the attorney general of Idaho or the county prosecuting attorney within twenty-four (24) hours of filing it within the district court. The appeal submittal shall also be served upon the opposing candidate(s) or representatives of the pro and con sides of the ballot measure within twenty-four (24) hours of filing the appeal in the district court.

(3) The attorney general, in consultation with the secretary of state, may respond to the submittal by brief or the prosecuting attorney, in consultation with the county clerk, may respond for district elections.

(4) The opposing candidate(s) or parties, regarding a measure, may respond to the submittal by brief.

(5) At the discretion of the district court judge, a hearing may be ordered within five (5) days of the filing of the appeal. All parties required to be

served with the appeal may participate fully in the hearing. The judge may determine that the appeal may be decided on the brief without a hearing.

(6) A decision thereon shall be given within five (5) days. Any appeal from the decision of the district court must be taken within twenty-four (24) hours after a decision is rendered. A decision on the appeal shall be given within five (5) days. No further appeal shall be allowed.

### **History.**

1957, ch. 198, § 8, p. 410; am. 1985, ch. 41, § 7, p. 84; am. 2004, ch. 48, § 1, p. 232; am. 2011, ch. 285, § 22, p. 778.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

Secretary of state, § 67-901 et seq.

### **Amendments.**

The 2011 amendment, by ch. 285, in subsection (1) inserted, “or person” following “candidate” in the introductory paragraph, inserted “or the person on either side of a measure” in paragraph (a), and substituted “county, municipal or district office” for “county or district office” in the last, undesignated paragraph; in subsection (2), inserted “or the county prosecuting attorney” and “or representatives of the pro and con sides of the ballot measure”; added “or the prosecuting attorney, in consultation with the county clerk, may respond for district elections” in subsection (3); and inserted “or parties, regarding a measure” in subsection (4).

### **Compiler’s Notes.**

The letter “s” enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

## **JUDICIAL DECISIONS**

**Cited in:** Hansen v. Jones, 107 Idaho 1098, 695 P.2d 1237 (1984).



**34-2309. Free recount.** — A losing candidate for nomination, or election or person supporting or opposing a ballot measure, may request a recount of the votes cast for the nomination or election to that office or passage or failure of a measure if the difference between the vote cast for that candidate and for the winning candidate for nomination or election, or the difference between the yes and no votes on a measure, is less than or equal to one-tenth of one percent (0.1%) of the total votes cast for that office or five (5) votes, whichever is greater. All requests shall be in writing, and filed with the appropriate officer during the time mentioned in section 34-2301, Idaho Code.

The state shall pay for the recount of a federal, state, or legislative district office, or state measure while the county shall pay for the recount of a county, city or district office or measure.

### **History.**

**I.C., § 34-2309**, as added by 1985, ch. 41, § 9, p. 84; am. 1986, ch. 97, § 3, p. 275; am. 2011, ch. 285, § 23, p. 778; am. 2015, ch. 282, § 7, p. 1147; am. 2015, ch. 287, § 1, p. 1159.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Prior Laws.**

Former § 34-2309, which comprised 1957, ch. 198, § 9, p. 410, was repealed by S.L. 1985, ch. 41, § 8.

### **Amendments.**

The 2011 amendment, by ch. 285, in the first paragraph, inserted, “or person supporting or opposing a ballot measure”, “or passage or failure of a measure”, and “or the difference between the yes and no votes on a measure”; and, in the second paragraph, inserted “or state measure” and substituted “county, city or district office or measure” for “county office.”

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 282, substituted “Free” for “Automatic” in the section heading; inserted “or five (5) votes, whichever is greater” at the end of the first sentence in the first paragraph; and, in the second paragraph, twice deleted “automatic” preceding “recount”.

The 2015 amendment, by ch. 287, in the first paragraph, deleted “to a federal, state, or county office” following “or election” near the beginning and substituted “appropriate officer” for “attorney general” in the last sentence.

### **Effective Dates.**

Section 4 of S.L. 1986, ch. 97 declared an emergency. Approved March 22, 1986.

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.

Section 9 of S.L. 2015, ch. 282 declared an emergency. Approved April 6, 2015.

Section 2 of S.L. 2015, ch. 287 declared an emergency. Approved April 6, 2015.

**34-2310. “Costs” defined.** — As used in this chapter, costs of recount shall include the following:

- (1) Travel costs of the office of the attorney general including meals and lodging.
- (2) Normal hourly rate for election judges and clerks who are not employees of the county.
- (3) Mileage for election judges who are not employees of the county.
- (4) Any other costs directly attributable to the recount.

**History.**

I.C., § 34-2310, as added by 1985, ch. 41, § 10, p. 84.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

## **34-2311, 34-2312. [Reserved.]**

### **34-2313. Recount procedures for automated tabulation systems. —**

(1) To ensure the accuracy of automated vote tabulation systems, the county clerk shall follow the recount procedures provided in this section.

(2) The votes from a random selection of ballots shall be tallied by hand and the votes from the same ballots shall be tabulated by an electronic ballot tabulating system. For statewide and federal office or a statewide measure, the number of ballots to be tallied and tabulated shall be equal to at least two (2) precincts of the ballots cast in each county. For all other offices or measures, the number of ballots to be tallied and tabulated shall be equal to the greater of one hundred (100) or five percent (5%) of the ballots cast for the office or measure, distributed by county where applicable.

(3) For a statewide or federal office or a statewide measure, if the results of the hand-tally and the automated vote tally system tabulation within the county differ by one-fourth of one percent (.25%) or less, the remaining ballots shall be recounted using automated vote tabulating systems. Otherwise, the remaining ballots shall be recounted by hand.

(4) For other offices and ballot measures, if the results of the hand-tally and electronic vote tabulating system tabulation differ by less than one percent (1%), or two (2) votes, whichever is greater, the remaining ballots shall be recounted using automated vote tabulating systems. Otherwise, the remaining ballots shall be recounted by hand.

### **History.**

I.C., § 34-2313, as added by 2011, ch. 285, § 24, p. 778.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 25 of S.L. 2011, ch. 285 declared an emergency. Approved April 11, 2011.



## **CHAPTER 24**

### **VOTING BY MACHINE OR VOTE TALLY SYSTEM**

#### **Section.**

- 34-2401. Definitions.
- 34-2402. Authority to use.
- 34-2403. Applicability of other laws.
- 34-2404. Tampering with machines prohibited.
- 34-2405. Authority for procurement of machines.
- 34-2406. Joint purchase and use of machines authorized.
- 34-2407. Purchase of machines — Manner of payment.
- 34-2408. Prior approval required for issuance of bonds.
- 34-2409. Examination of machines by secretary of state prior to adoption.
- 34-2410. Specifications for voting machines or vote tally systems.
- 34-2411. Duties of clerks of election boards.
- 34-2412. Composition of precinct election boards.
- 34-2413. Preparation of machines for use — Instructions.
- 34-2414. Printed matter and supplies.
- 34-2415. Preparation of polling place for election.
- 34-2416. Procedure for preparing machines for an election.
- 34-2417. Notice of locations of voting machines and polling places.
- 34-2418. Ballots and ballot labels.
- 34-2419. Rotation of names of candidates.
- 34-2420. Examinations of face of machine during election.
- 34-2421. Procedure if a voting machine becomes inoperative.

34-2422. Closing of polls — Delivery of ballots to clerk before polls closed.

34-2423. Absent voting by voting machine or paper ballot.

34-2424. Paper ballots used in conjunction with voting machines.

34-2425. Preparation and distribution of sample ballots.

34-2426. Exhibition of voting machines for instruction of voters.

34-2427. Voters with physical or other disability.

34-2428. Time allowed each voter to vote. [Repealed.]

34-2429. Validation of elections.

34-2430. Rental agreements. [Repealed.]



**34-2401. Definitions.** — As used in this chapter:

(1) “Ballot” means any material used or the voting surface of a direct recording electronic system on which votes are cast for offices, candidates and measures.

(2) “Ballot card” means the tabulating card or cards of any size upon which the voter records his vote.

(3) “Ballot label” means the cards, papers, booklet or other material containing the names of offices and candidates and measures to be voted on.

(4) “Election” means all state, county, city, district and other political subdivision elections including bond issue elections.

(5) “Governing body” means the board of county commissioners of any county or the governing body of any city, district or other political subdivision elections including bond issue elections.

(6) “Measure” means a proposed law, act or part of an act of the legislative assembly or amendment to the constitution of the state of Idaho to be submitted to the people for their approval or rejection at an election. “Measure” also means other propositions which can be submitted to the voters at any election by counties, cities, districts or other political subdivisions.

(7) “Model” means a mechanically operated model of a portion of the face of the machine illustrating the means of voting.

(8) “Precinct” includes all election districts.

(9) “Voting machine” means:

(a) Any mechanical or electronic device which will record every vote cast by any voter on candidates and measures and which will either internally or externally total all votes cast on that device;

(b) Any device into which a ballot card may be inserted and which is so designed and constructed that the vote for any candidate or measure may be indicated by punching or marking the ballot card.

(10) “Vote tally system” means one (1) or more pieces of machinery or equipment necessary to examine and tally automatically paper ballots having marks placed thereon by a written mark or by a marking stamp. The examination shall be accomplished by either mark sensing or optical scanning.

### **History.**

1970, ch. 140, § 132, p. 351; am. 1974, ch. 3, § 1, p. 17; am. 2001, ch. 272, § 3, p. 993; am. 2003, ch. 48, § 14, p. 181.

## **STATUTORY NOTES**

### **Cross References.**

Definitions for entire election law, § 34-101 et seq.

Penalties for violation of election laws, § 18-2301 et seq.

### **Prior Laws.**

Former § 34-2401, which comprised 1963, ch. 177, § 1, p. 508, was repealed by S.L. 1970, ch. 140, § 217.

### **Effective Dates.**

Section 218 of S.L. 1970, ch. 140 declared an emergency and provided that §§ 132—161 of the act should take effect on March 10, 1970.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

## **RESEARCH REFERENCES**

**A.L.R.** — Electronic voting systems. [12 A.L.R.6th 523](#).

**34-2402. Authority to use.** — It is the policy of this state that at all elections, including bond issue elections, that ballots or votes may be cast, registered, recorded and counted by means of voting machines or vote tally systems as provided in this chapter.

**History.**

I.C., § 34-2402, as added by 1974, ch. 3, § 3, p. 17.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2402, which comprised 1963, ch. 177, § 2, p. 508, was repealed by S.L. 1970, ch. 140, § 217.

Another former § 34-2402, which comprised S.L. 1970, ch. 140, § 133, p. 351, was repealed by S.L. 1974, ch. 3, § 2.

**34-2403. Applicability of other laws.** — All election laws, including, but not limited to, bond election laws, city charters or ordinances, not inconsistent with this chapter, shall apply to all elections in election precincts where voting machines or vote tally systems are used. No provision of law, city charter or ordinance which in any way conflicts with this chapter or with the use of voting machines or vote tally systems as provided in this chapter, shall operate to prohibit use of voting machines or vote tally systems in any election or bond issue election.

**History.**

I.C., § 34-2403, as added by 1974, ch. 3, § 5, p. 17.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2403, which comprised 1963, ch. 177, § 4, p. 508, was repealed by S.L. 1970, ch. 140, § 217.

Another former § 34-2403, which comprised S.L. 1970, ch. 140, § 134, p. 351, was repealed by S.L. 1974, ch. 3, § 4.

**34-2404. Tampering with machines prohibited.** — (1) No person shall:

(a) Tamper with or injure or attempt to injure any voting machine or vote tally system to be used or being used in an election.

(b) Tamper with any voting machine or vote tally system that has been used in an election.

(c) Prevent or attempt to prevent the correct operation of any voting machine or vote tally system.

(2) An unauthorized person shall not make or have in his possession a key to a voting machine to be used or being used in an election.

(3) Neither the secretary of state nor any officer or employee of any county, city, district or other political subdivision using voting machines or vote tally systems, shall solicit or accept any compensation, other than amounts paid by the governmental unit, in connection with the sale, lease or use of voting machines or vote tally systems.

**History.**

1970, ch. 140, § 135, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former §§ 34-2404 to 34-2446, which comprised 1963, ch. 177, §§ 4 to 46, p. 508, were repealed by S.L. 1970, ch. 140, § 217.

**34-2405. Authority for procurement of machines.** — (1) After consultation with the county clerk as chief elections officer of his county, the governing body at any regular meeting or a special meeting called for the purpose, may rent, purchase or otherwise procure, and provide for the use of, in all or a portion of the election precincts of the county, any voting machine or vote tally system which the governing body deems to be in the best interest of that county and which machine or system is approved by the secretary of state.

(2) Thereafter the voting machine or vote tally system shall be used for voting and for receiving, registering and counting the votes in all primary and general elections held in such precincts.

(3) In all other elections, the voting machine or vote tally system may be used for voting, receiving, registering and counting the votes at the direction of the county clerk.

**History.**

1970, ch. 140, § 136, p. 351; am. 1972, ch. 129, § 1, p. 257.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2405 was repealed. See Prior Laws, § 34-2404.

**34-2406. Joint purchase and use of machines authorized.** — (1) In procuring the necessary voting machines or vote tally systems to be used, a governing body of any county, city, district or other political subdivision in the county, may by agreement entered into by the board of county commissioners and the governing bodies of cities, districts or other political subdivisions, provide for the joint purchase and subsequent ownership of voting machines or vote tally systems and for the care, maintenance and use of the machines or vote tally systems.

(2) The governing body of two (2) or more counties may by agreement provide for the joint use of voting machines or vote tally systems.

**History.**

1970, ch. 140, § 137, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2406 was repealed. See Prior Laws, § 34-2404.

**34-2407. Purchase of machines — Manner of payment.** — (1) The governing body may, on the adoption and purchase of voting machines or vote tally systems, provide for their payment in the method it determines to be for the best interest of the county, city, district or other political subdivision. The governing body may make contracts for the purchase of the machines or vote tally systems with such provisions with regard to price, manner of purchase and time of payment that the governing body determines are proper.

(2) For the purpose of paying for voting machines or vote tally systems, the governing body may: (a) Issue bonds, warrants, notes or other negotiable obligations. The bonds, warrants, certificates, notes or other obligations shall be a charge upon the county, city, district or other political subdivisions.

(b) Pay for the voting machines or vote tally system in cash out of the general fund.

(c) Provide for the payment for the voting machines or vote tally systems by other means.

(3) In estimating the amount of taxes for the general fund, if any, the amount required for payment for voting machines or vote tally systems shall be added, extending over the time required to pay for the machines or vote tally systems.

**History.**

1970, ch. 140, § 138, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2407 was repealed. See Prior Laws, § 34-2404.



**34-2408. Prior approval required for issuance of bonds.** — The governing body of any county shall, prior to authorizing the issuance of bonds obtain the approval in writing of the secretary of state as to the type and number of machines or vote tally systems to be purchased and the price to be paid therefor.

**History.**

1970, ch. 140, § 139, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2408 was repealed. See Prior Laws, § 34-2404.

**34-2409. Examination of machines by secretary of state prior to adoption.** — (1) The secretary of state shall publicly examine all makes of voting machines or vote tally systems submitted to him and determine whether the machines or vote tally systems comply with the requirements of this chapter, and can safely be used by voters at elections under the provisions of this chapter. Any voting machine or vote tally system shall be certified by the secretary of state for use in Idaho. Except for functions or capabilities unique to this state, voting machines and vote tally systems shall be tested and the results certified by an independent testing authority designated by the secretary of state prior to certification.

(2) Any person owning or interested in a voting machine or vote tally system may submit it to the secretary of state for examination. No examination shall be conducted unless documentation is provided indicating that the voting machine or vote tally system meets the federal election commission standards. For the purpose of assistance in examining the machine or vote tally system the secretary of state may employ not more than three (3) individuals who are expert in one (1) or more of the fields of data processing, mechanical engineering and public administration. The compensation of these assistants shall be paid by the person submitting the machine or vote tally system.

(3) Within thirty (30) days after completing the examination and approval of any voting machine or vote tally system the secretary of state shall make and file in his office his report on the machine or vote tally system, together with a written or printed description and drawings and photographs clearly identifying the machine or vote tally system and the operation thereof. As soon as practicable after such filing, the secretary of state upon request shall send a copy of the report to any governing body within the state.

(4) Any voting machine or vote tally system that receives the approval of the secretary of state may be used for conducting elections in this state. Any machine or vote tally system that does not receive such approval shall not be adopted for or used at any election. After a voting machine or vote tally system has been approved by the secretary of state, any change or improvement in the machine or vote tally system that does not impair its

accuracy, efficiency or capacity shall not render necessary a reexamination or reapproval of the machine or vote tally system.

(5) Any voting system, including paper ballots, that was used in the 2004 general election shall be continued to be authorized for use as long as the voting system meets the requirements of the “Help America Vote Act of 2002,” [Public Law 107-252](#).

(6) For all elections conducted after 2004, no direct recording electronic voting device shall be used unless the direct recording electronic voting device has a voter verifiable paper audit trail. Any certifications of a direct recording electronic voting device without a voter verifiable paper audit trail are hereby declared null and void.

(7) The secretary of state may periodically review the various voting systems that have been certified for use in the state to ensure such systems meet the standards set forth by the federal election assistance commission and the national institute of standards and technology. Any voting system that does not meet such standards may be decertified after a public hearing.

### **History.**

1970, ch. 140, § 140, p. 351; am. 2001, ch. 272, § 4, p. 993; am. 2005, ch. 282, § 1, p. 918; am. 2007, ch. 202, § 8, p. 620; am. 2012, ch. 179, § 1, p. 470.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 34-2409 was repealed. See Prior Laws, § 34-2404.

### **Amendments.**

The 2007 amendment, by ch. 202, added “or be certified by the federal election assistance commission” at the end of subsection (1).

The 2012 amendment, by ch. 179, in subsection (1), substituted the present second sentence for “In order for any voting machine or vote tally system to be certified in Idaho it must meet the federal election commission

standards and be approved for use by an independent testing authority sanctioned by the national association of state election directors (NASED) or be certified by the federal election assistance commission” and added the last sentence.

### **Federal References.**

The Help America Vote Act of 2002, referred to in subsection (5), is now codified as **52 USCS § 20901 et seq.**

### **Compiler’s Notes.**

The national institute of standards and technology, referred to in subsection (7), is a non-regulatory federal agency within the U.S. department of commerce. *See <https://www.nist.gov>.*

**34-2410. Specifications for voting machines or vote tally systems. —**

(1) No voting machine or vote tally system shall be approved by the secretary of state unless it is constructed so that it:

- (a) Secures to the voter secrecy in the act of voting.
- (b) Provides facilities for voting for the candidates of as many political parties or organizations as may make nominations and for or against as many measures as may be submitted.
- (c) Permits the voter to vote for any person for any office and upon any measure that he has the right to vote for.
- (d) Permits the voter, except at primary elections, to vote for all the candidates of one (1) party or in part for the candidates of one (1) party and in part for the candidates of one or more other parties.
- (e) Permits the voter to vote for as many persons for an office as he is lawfully entitled to vote for but no more.
- (f) Prevents the voter from voting for the same person more than once for the same office.
- (g) Correctly registers or records all votes cast for any and all persons and for or against any and all measures.
- (h) Can be adjusted so that the counting mechanism rejects any vote cast on the tabulating card in excess of the number which the voter is entitled to vote.
- (i) Provides that a vote for more than one (1) candidate cannot be cast by one (1) single operation of the machine or vote tally system.

(2) A vote tally system shall be:

- (a) Capable of correctly counting votes on ballots or ballot cards on which the proper number of votes have been marked for any office or question or issue that has been voted.
- (b) Capable of ignoring the votes marked for any office or question or issue where more than the allowable number of votes have been marked,

but shall correctly count the properly voted portions of the ballot card.

(c) Capable of accumulating a count of the specific number of ballots or ballot cards tallied for a precinct, accumulating total votes by a candidate for each office; and accumulating total votes for and against each question and issue of the ballots or ballot cards tallied for a precinct.

(d) Capable of tallying votes from ballots or ballot cards of different political parties, from the same precinct, in the case of a primary election.

(e) Capable of accommodating rotation of candidates' names on the ballot or ballot card, provided that all ballots or ballot cards from one (1) precinct shall be of the same rotation sequence.

(f) Capable of automatically producing precinct totals in either printed, marked, or punched form, or combinations thereof.

**History.**

1970, ch. 140, § 141, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2410 was repealed. See Prior Laws, § 34-2404.

**34-2411. Duties of clerks of election boards.** — (1) The secretary of state shall issue an administrative order outlining the duties of each of the clerks on the election board. He shall devise and prescribe for use by each local election officer the contents, form, character and kinds of ballots, ballot labels, ballot cards, formats, records, papers and documents and other materials and supplies and procedures necessary in the use of voting machines or vote tally systems and in the process of counting and tabulating the ballots by mechanical or electrical counting devices or equipment or computers.

(2) The secretary of state shall prescribe rules and regulations to achieve and maintain the maximum degree of correctness, impartiality and efficiency on the procedures of voting, and of counting, tabulating and recording votes, by the devices, machines or vote tally systems and methods provided by this act.

**History.**

1970, ch. 140, § 142, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2411 was repealed. See Prior Laws, § 34-2404.

**Compiler's Notes.**

The term “this act” at the end of subsection (2) refers to S.L. 1970, Chapter 170, which is codified throughout Title 34 of the Idaho Code.

**34-2412. Composition of precinct election boards.** — (1) The election board of each election precinct in which a voting machine or vote tally system is used shall consist of an election judge and one (1) or more clerks. Each election board shall contain personnel representing all existing political parties if a list of applicants has been provided to the county clerk by the precinct committeemen of the precincts at least sixty (60) days prior to the primary election. The county clerk shall establish the number of election board clerks.

(2) The qualifications and duties of election judges shall apply to the appointment of election board clerks in counties or precincts where voting machines or vote tally systems are used.

**History.**

1970, ch. 140, § 143, p. 351; am. 1974, ch. 75, § 1, p. 1162; am. 1989, ch. 346, § 1, p. 873; am. 2012, ch. 211, § 12, p. 571.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2412 was repealed. See Prior Laws, § 34-2404.

**Amendments.**

The 2012 amendment, by ch. 211, deleted former subsection (3), regarding adjusting election precincts.

**Effective Dates.**

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.



**34-2413. Preparation of machines for use — Instructions.** — (1) Before each election at which voting machines or vote tally systems are to be used, the county clerk of a county, in which voting machines or vote tally systems are to be used, shall cause them to be properly prepared and shall cause the election board to be properly instructed in their use.

(2) For the purpose of giving such instruction, the county clerk shall call the meeting or meetings of the election board that are necessary. Each election board shall attend the meetings and receive the instruction necessary for the proper conduct of the election with the machine or vote tally system.

(3) No election board judge or clerk shall serve in any election at which a voting machine or vote tally system is used unless he has received the required instruction and is fully qualified to perform the duties in connection with the machine or vote tally system; but this requirement shall not prevent the appointment of an election board clerk to fill a vacancy in an emergency.

**History.**

1970, ch. 140, § 144, p. 351; am. 2012, ch. 211, § 13, p. 571.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2413 was repealed. See Prior Laws, § 34-2404.

**Amendments.**

The 2012 amendment, by ch. 211, deleted “or the clerk of a city, district or other political subdivision” following “the county clerk of a county” near the middle of subsection (1).

**Effective Dates.**

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

**34-2414. Printed matter and supplies.** — (1) The election officer charged with the duty of providing ballots shall provide all necessary instruction, forms and supplies required for the proper use of the voting machines or vote tally systems.

(2) Within a proper and reasonable time before the first election at which voting machines or vote tally systems are to be used, the secretary of state shall prepare samples of the printed matter and supplies required. He shall furnish one (1) of each of the samples to the election officer in charge of the election of each county, city, district or other political subdivision in which the machines or vote tally systems are to be used.

(3) The county clerk or other election officer shall deliver voting machines to each election board as provided for election supplies.

**History.**

1970, ch. 140, § 145, p. 351.

**STATUTORY NOTES**

**Cross References.**

Preparation of primary ballots, § 34-713.

Secretary of state, § 67-901 et seq.

Secretary of state prescribes form and contents of ballots and related documents, § 34-903.

**Prior Laws.**

Former § 34-2414 was repealed. See Prior Laws, § 34-2404.

**34-2415. Preparation of polling place for election.** — (1) The election board of each election precinct in which a voting machine is to be used shall meet at the polling place for the election precinct at least thirty (30) minutes before the time set for opening the polls. Before preparing the machine for voting, the election board shall proceed as prescribed in subsection (2) of this section.

(2) The election board shall: (a) Cause the voting machine to be placed where it can be conveniently attended by the election board and conveniently operated by the voters and where the ballot labels on the machines can be plainly seen by the election board and the public when not being voted on.

(b) Cause the model to be placed where each voter can conveniently operate it and receive instructions on the model as to the manner of voting before entering the voting machine booth.

(c) Determine that the ballot labels are in the proper place on the machine.

(3) After performing their duties as provided in this section, the election board shall certify to the fact in the appropriate places in the poll book.

**History.**

1970, ch. 140, § 146, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2415 was repealed. See Prior Laws, § 34-2404.

**34-2416. Procedure for preparing machines for an election.** — (1) In preparing a voting machine for an election, the county clerk or the clerk of the city, district or other political subdivision, as the case may be, shall:

(a) Arrange the machine and the ballot labels so that it shall in every particular case meet the requirements of voting and counting at such elections.

(b) Thoroughly inspect and test the machine, and file a certificate in his office that the ballot labels have been properly arranged.

(2) The arrangement of offices and names of candidates upon the ballot labels shall conform as nearly as practicable to the provisions of law for the arrangement of names on paper ballots, and in the event that there are more candidates for any office than can be placed upon one (1) page, the labels shall be clearly marked to indicate that the names of candidates for the office are continued on the following page.

(3) Representatives of political parties and candidates shall be permitted to examine the voting machines or vote tally systems.

**History.**

1970, ch. 140, § 147, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2416 was repealed. See Prior Laws, § 34-2404.

**34-2417. Notice of locations of voting machines and polling places. —**

Before preparing the voting machines or vote tally systems for any election, the county clerk shall mail to the chairman of the county or legislative district central committees of each political party who has notified such clerk that notice is desired, a written notice stating the time and place or places where voting machines or vote tally systems will be prepared for the election. At such times and places, one (1) representative of each political party is entitled to be present and see that the machines or vote tally systems are properly prepared and placed in proper condition and order for use at the election. In nonpartisan elections each candidate may designate one (1) representative who has the same powers as the political party representatives. The political party and candidate representatives shall certify that they have witnessed the testing and preparation of the machines or vote tally systems. The certificates shall be filed in the office of the county clerk.

**History.**

1970, ch. 140, § 148, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2417 was repealed. See Prior Laws, § 34-2404.

**34-2418. Ballots and ballot labels.** — (1) The ballots and ballot labels required to be furnished for general or special elections shall be printed in black ink on clear white material of such size and arrangements as to suit the construction of the machine. The ballot labels for measures may contain a condensed statement of purpose for each measure to be voted on, accompanied by the words “Yes” and “No.” The title of the offices on the ballot labels shall be printed in type as large as the space for the office will reasonably permit. Where more than one (1) candidate can be voted for an office, there shall be printed below the office title words indicating the number the voter is lawfully entitled to vote for out of the whole number of candidates, such as “Vote for Two.”

(2) The ballots and ballot labels required to be furnished for primary elections may be of different colors for the political parties who are nominating or electing candidates.

(3) The “judiciary ballot” may be added to the ballot labels for the political parties. Candidates for the above offices will be shown under the general title of nonpartisan judicial candidates.

(4) When a vote tally system is used, the county clerk shall prepare the ballots as nearly as practicable as required by law.

### **History.**

1970, ch. 140, § 149, p. 351; am. 1994, ch. 54, § 4, p. 93.

## **STATUTORY NOTES**

### **Cross References.**

Ballots, § 34-901 et seq.

### **Prior Laws.**

Former § 34-2418 was repealed. See Prior Laws, § 34-2404.

### **Effective Dates.**

Section 7 of S.L. 1994, ch. 54, provided that “an emergency existing therefor, which emergency is hereby declared to exist, Sections 4, 5 and 6

of this act shall be in full force and effect on and after March 3, 1994. Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 1994.”

**34-2419. Rotation of names of candidates.** — In each primary and general election when two (2) or more persons are candidates for nomination or election to the same office, the county clerk or the clerk of a city, district or other municipality in which voting machines or vote tally systems are used shall rotate the names of candidates as directed by the secretary of state.

**History.**

1970, ch. 140, § 150, p. 351.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 34-2419 was repealed. See Prior Laws, § 34-2404.



**34-2420. Examinations of face of machine during election.** — The election board shall occasionally examine the face of the voting machine and the ballot labels to determine that the machine and the ballot labels have not been damaged or tampered with.

**History.**

1970, ch. 140, § 151, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2420 was repealed. See Prior Laws, § 34-2404.

**34-2421. Procedure if a voting machine becomes inoperative.** — (1) If any voting machine used in any election precinct, during or before the time the polls are opened, becomes damaged so as to render it inoperative in whole or in part, an election board clerk immediately shall notify the election officer charged with the care of the machine.

(2) If possible, the election officer so notified shall repair the machine at once or substitute another machine for the damaged machine.

(3) If no other machine can be procured for use at the election and the damaged machine cannot be repaired in time for further use at the election, or where in the discretion of a majority of the members of the election board it is impracticable to use the machine, the election board shall permit the voters to use paper ballots prepared as in cases where paper ballots are used. The paper ballots shall be furnished to the election board by the county clerk. The paper ballots shall be issued, voted and deposited in ballot boxes in as nearly the same manner as provided by law, except that the paper ballots shall not be tallied and returned by the election board. Instead, these paper ballots shall be delivered to the county clerk for his tally and canvass.

**History.**

1970, ch. 140, § 152, p. 351; am. 1971, ch. 5, § 7, p. 11.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2421 was repealed. See Prior Laws, § 34-2404.

**34-2422. Closing of polls — Delivery of ballots to clerk before polls closed.** — (1) At the hour for closing the polls, the election board shall declare the polls of the election closed and shall not permit any further voting. However, electors who are, at the hour of closing, within the polling room or awaiting their turn to vote shall be considered as having begun the act of voting and shall be permitted to cast their votes.

(2) At any time prior to the closing of the polls provision may be made for the delivery of voted ballots to the county clerk or the clerk of a city, district or other political subdivision for counting. If such procedure is adopted, the result of this early count shall not be released to the public until after 8:00 p.m. of election day.

**History.**

I.C., § 34-2422 as added by 1971, ch. 5, § 8, p. 11.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2422 was repealed. See Prior Laws, § 34-2404.

**34-2423. Absent voting by voting machine or paper ballot.** — The county clerk may provide that absent voting shall be either by voting machine or by marking a paper ballot or a combination of both. In any of the foregoing cases he may establish one (1) absent elector unit to handle and process absent elector ballots for each legislative district within his county and shall cause sufficient ballots of the proper kind or kinds to be provided.

Voted ballots shall be retained by the county clerk until election day when they shall be transferred to the ballot processing center and thereafter made a part of the election returns.

**History.**

1970, ch. 140, § 154, p. 351; am. 1976, ch. 73, § 2, p. 242.

**STATUTORY NOTES**

**Cross References.**

Absentee voting, § 34-1001 et seq.

**Prior Laws.**

Former § 34-2423 was repealed. See Prior Laws, § 34-2404.

**34-2424. Paper ballots used in conjunction with voting machines. —**  
In any election where voting machines or vote tally systems are used:

(1) Paper ballots may be used to record the electors' votes for party offices.

(2) Paper ballots may be used to record the electors' votes for or against municipal candidates or measures.

(3) Paper ballots which are used in conjunction with voting machines may be returned to the office of the county clerk for counting by special counting boards. Ballots so counted shall be tallied and returned by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code.

(4) Ballots or ballot cards may be returned to the office of the county clerk for counting.

(5) In the event that paper ballots are used in conjunction with voting machines or vote tally systems to record write-in votes, these paper ballots may be returned to the office of the county clerk for counting by special counting boards. Ballots so counted shall be tallied and returned by precinct or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code.

**History.**

1970, ch. 140, § 155, p. 351; am. 2012, ch. 211, § 14, p. 571.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2424 was repealed. See Prior Laws, § 34-2404.

**Amendments.**

The 2012 amendment, by ch. 211, inserted “or polling location for elections conducted pursuant to chapter 14, title 34, Idaho Code” at the end of subsections (3) and (5).

**Effective Dates.**

Section 15 of S.L. 2012, ch. 211 declared an emergency. Approved April 3, 2012.

**34-2425. Preparation and distribution of sample ballots.** — (1) At each primary, general and special election there shall be provided as many sample ballots as the county clerk considers necessary. The sample ballots shall be prepared and distributed as provided by law.

(2) For each primary, general and special election the county clerk shall cause to be published a facsimile, except as to size, of the sample ballot required in subsection (1) of this section.

**History.**

1970, ch. 140, § 156, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2425 was repealed. See Prior Laws, § 34-2404.

**34-2426. Exhibition of voting machines for instruction of voters. —**

(1) Before each election at which voting machines are to be used the county clerk shall place on public exhibition a suitable number of machines for the proper instruction of voters. The machines shall be arranged and equipped with ballot labels so as to best illustrate the method of voting at that election and so far as practicable, shall contain:

- (a) The names of the offices to be filled.
- (b) The names of the candidates to be voted for, together with their proper party designations in case of party elections.
- (c) Statements of the measure to be voted on.

(2) In addition to supplying sample ballots, the county clerk shall, before the election, take reasonable additional steps to familiarize the voters with a diagram showing the face of the voting machine after the official ballot labels are arranged thereon with illustrated instructions how to vote, and with the locations of the voting machines that are on public exhibition.

(3) Before each election at which a vote tally system is to be used, the county clerk shall make every reasonable effort to acquaint the electors within his county with the ballot format and the marking system.

**History.**

1970, ch. 140, § 157, p. 351.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2426 was repealed. See Prior Laws, § 34-2404.



**34-2427. Voters with physical or other disability.** — (1) The election board clerks shall instruct electors on how to record their votes on the voting machine or vote tally system, and shall give assistance to any elector who declares that he is unable by reason of physical or other disability to record his vote on the machine or vote tally system, and on request by the elector after he has entered the voting booth, shall give him the necessary information to enable him to record his vote.

(2) Any elector who, because of blindness, physical or other disability, is unable to mark his ballot shall, upon request, receive the assistance of the election board clerks or some other person chosen by the elector in the marking thereof. Such clerks or person shall ascertain the wishes of the elector and mark his ballot in accordance therewith, and shall thereafter give no information regarding such marking. Whenever an elector receives assistance in this manner, a clerk shall make a notation thereof in the combination election record and poll book following the name of the elector.

(3) If any elector, after entering the voting booth, asks for information regarding the operation of the voting machine or marking device, the election board clerks shall give him the necessary information.

### **History.**

1970, ch. 140, § 158, p. 351; am. 1972, ch. 129, § 2, p. 257; am. 2010, ch. 235, § 20, p. 542; am. 2015, ch. 282, § 8, p. 1147.

## **STATUTORY NOTES**

### **Cross References.**

Denial of use of facilities by person accompanied by guide dog for the blind prohibited, § 18-5812A.

Physically disabled voters, § 34-1108.

### **Prior Laws.**

Former § 34-2427 was repealed. See Prior Laws, § 34-2404.

**Amendments.**

The 2010 amendment, by ch. 235, rewrote the section heading, which formerly read: “Physically disabled voters”; and in subsections (1) and (2), substituted “physical or other disability” for “physical disability or other handicap.”

The 2015 amendment, by ch. 282, deleted the former third sentence in subsection (2), which read: “The election board judge may require a declaration of disability to be made by the elector under oath”.

**Effective Dates.**

Section 5 of S.L. 1972, ch. 129 declared an emergency. Approved March 13, 1972.

Section 9 of S.L. 2015, ch. 282 declared an emergency. Approved April 6, 2015.

**34-2428. Time allowed each voter to vote. [Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

A former § 34-2428 was repealed. See Prior Laws, § 34-2404.

**Compiler's Notes.**

This section, which comprised 1970, ch. 140, § 159, p. 351, was repealed by S.L. 2001, ch. 272, § 5.

**34-2429. Validation of elections.** — All elections, including but not limited to bond issue elections, heretofore conducted pursuant to this chapter and all proceedings had or to be had in the authorization and issuance of the bonds authorized thereat, together with all such bonds when issued, are hereby validated, ratified and confirmed, and all such bonds when issued are declared to constitute legally binding obligations in accordance with their terms. Nothing in this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which are being contested at the time this act takes effect.

**History.**

I.C., § 34-2429, as added by 1974, ch. 3, § 6, p. 17.

**STATUTORY NOTES**

**Prior Laws.**

Former § 34-2429 was repealed. See Prior Laws, § 34-2404.

Another former § 34-2429, which comprised S.L. 1970, ch. 140, § 160, p. 351, was repealed by S.L. 1972, ch. 129, § 3.

**Compiler's Notes.**

The phrase “the time this act takes effect” at the end of the section refers to the effective date of S.L. 1974, Chapter 3, which was effective February 8, 1974.

**Effective Dates.**

Section 7 of S.L. 1974, ch. 3 declared an emergency. Approved February 8, 1974.

**34-2430. Rental agreements. [Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

Another former § 34-2430 was repealed. See Prior Laws, § 34-2404.

**Compiler's Notes.**

Former § 34-2430, which comprised S.L. 1970, ch. 140, § 161, p. 351, was repealed by S.L. 1972, ch. 129, § 4.



## **CHAPTER 25**

### **ELECTION CAMPAIGN FUND**

Section.

34-2501 — 34-2505. [Repealed.]

Idaho Code 34-2501

**34-2501. Definitions. [Repealed.]**

Repealed by S.L. 2010, ch. 3, § 1, effective January 1, 2010.

**History.**

1975, ch. 132, § 1, p. 290; am. 1978, ch. 40, § 1, p. 69.



**34-2502. Election campaign fund — Creation. [Repealed.]**

Repealed by S.L. 2010, ch. 3, § 1, effective January 1, 2010.

**History.**

1975, ch. 132, § 2, p. 290; am. 1976, ch. 260, § 1, p. 880; am. 1994, ch. 180, § 54, p. 93.

Idaho Code 34-2503

**34-2503. Election campaign fund — Distribution. [Repealed.]**

Repealed by S.L. 2010, ch. 3, § 1, effective January 1, 2010.

**History.**

1975, ch. 132, § 4, p. 290; am. 2008, ch. 62, § 1, p. 154.

Idaho Code 34-2504

**34-2504. Statement of expenditures filed before election day.  
[Repealed.]**

Repealed by S.L. 2010, ch. 3, § 1, effective January 1, 2010.

**History.**

I.C., § 34-2504, as added by 1994, ch. 54, § 2, p. 93.

**STATUTORY NOTES**

**Prior Laws.**

A former § 34-2504, which comprised 1975, ch. 132, § 5, p. 290; am. 1982, ch. 137, § 6, p. 388, was repealed by S.L. 1994, ch. 54, § 1, effective July 1, 1994.

Idaho Code 34-2505

**34-2505. Statement of expenditures — Rules — Unqualified expenditures — Unexpended balance. [Repealed.]**

Repealed by S.L. 2010, ch. 3, § 1, effective January 1, 2010.

**History.**

1975, ch. 132, § 6, p. 290; am. 1994, ch. 54, § 3, p. 93; am. 1994, ch. 180, § 55, p. 96.

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